

THE
CASE OF LIBEL,
THE
KING v. JOHN LAMBERT
AND OTHERS,
1597
PRINTER AND PROPRIETORS
OF THE
MORNING CHRONICLE:

WITH
The ARGUMENTS of COUNSEL, and DECISION of
the COURT, on the general Question, " Whether the
" Special Jury, first struck and reduced, according to the
" Statute, shall be the Jury to try the Issue joined between
" the Parties ? "

SECOND EDITION.

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1794.

MAY 10 1922

ADVERTISEMENT.

IN presenting the following trial to the Public, at a period the most critical, perhaps, with respect to prosecutions, that ever occurred in the annals of this country, the Editor was chiefly influenced by two considerations.

First, the question, which arose in an early stage of the proceedings, with respect to juries, determined a very important rule of practice, namely, *that the first special jury, struck and reduced according to law, must try the issue joined between parties.* This decision of a controverted point, in the manner most consistent with common sense, and, as appeared from the pleadings, agreeable to the ancient practice of the Courts, and founded upon the statute law of the realm, is certainly to be estimated as an acquisition of no common magnitude to the subject.

Secondly, this is the first trial, since the Libel bill passed into a law, completely conducted upon the principles of that bill, and may serve as the best illustration of the wise and excellent provisions of the law, as it now stands, with respect to libel: a law admirably calculated to remove obscurity, to defeat improper influence, to facilitate the ends of justice, by simplifying its operations, and to afford additional security for the

full

full enjoyment of the most valuable privilege of Englishmen.

Impressed then with the view of this trial, as connected with great principles, and involving consequences the most important, both to the present age and to posterity, I have been anxious to render the following statement of the proceedings as full and correct as possible. Fidelity and accuracy are the only merits of a reporter; these I have carefully studied; it is not allowed to him who transmits the sentiments of others, to boast of his labours, or to claim the reward of public approbation: in this instance, I find myself sufficiently repaid, with the pleasing reflection that I have been called, *in an age of prosecutions*, to record *one verdict* gained to the cause of freedom.

CASE

CASE OF LIBEL, &c.

ON Tuesday, the 25th December, 1792, the following paper appeared as an advertisement in the Morning Chronicle:

At a Meeting of the Society for Political Information, held at the Talbot Inn, in Derby, July 16, 1792,

The following Address, declaratory of their principles, &c. was unanimously agreed to, and ordered to be printed :

To the Friends of Free Inquiry and the General Good.

Fellow Citizens,

Claiming it as our indefeasible right to associate together, in a peaceable and friendly manner, for the communication of thoughts, the formation of opinions, and to promote the general happiness, we think it unnecessary to offer any apology for inviting you to join in this manly and benevolent pursuit; the necessity of the inhabitants of every community endeavouring to procure a true knowledge of their rights, their duties, and their interests, will not be denied, except by those who are the slaves of prejudice, or the interested in the continuation of abuses. As men who wish to aspire to the title of Freemen, we totally deny the wisdom and the humanity of the advice, to approach the defects of government with "pious awe and trembling solicitude." What better doctrine could the Pope, or the tyrants of Europe desire? We think, therefore, that the cause of truth and justice can never be hurt by temperate and honest discussions; and that cause

which will not bear such a scrutiny, must be systematically or practically bad. We are sensible that those who are not friends to the general good, have attempted to inflame the public mind with the cry of "Danger," whenever men have associated for discussing the principles of government; and we have little doubt but such conduct will be pursued in this place; we would, therefore caution every honest man, who has really the welfare of the nation at heart, to avoid being led away by the prostituted clamours of those who live on the sources of corruption. We pity the fears of the timorous, and we are totally unconcerned respecting the false alarms of the venal. We are in the pursuit of truth, in a peaceable, calm, and unbiased manner; and wherever we recognize her features, we will embrace her as the companion of happiness, of wisdom, and of peace. This is the mode of our conduct; the reasons for it will be found in the following declaration of our opinions, to the whole of which each Member gives his hearty assent.

DECLARATION.

I. That all true Government is instituted for the general good; is legalized by the general will; and all its actions are, or ought to be, directed for the general happiness and prosperity of all honest citizens.

II. That we feel too much not to believe, that deep and alarming abuses exist in the British Government; yet we are at the same time fully sensible, that our situation is comfortable, compared with that of the people of many European kingdoms; and that as the times are in some degree moderate, they ought to be free from riot and confusion.

III. Yet we think there is sufficient cause to inquire into the necessity of the payment of seventeen millions of annual taxes, exclusive of poor rates, county rates, expences of collection, &c. &c. by seven millions of people; we think that these expences may be reduced, without lessening the true dignity of the nation, or the Government: and therefore wish for satisfaction in this important matter.

IV. We view with concern the frequency of wars. We are persuaded that the interests of the poor can never be promoted by accession of territory, when bought at the expence of their labour and blood; and we must say, in the language of a celebrated author, "We, who are only the people, but who pay for wars with our substance and our blood, will not cease to tell Kings," or Governments, "that to them alone wars are profitable: that the true and just conquests are those which

which each makes at home, by comforting the peasantry, by promoting agriculture and manufactoryes; by multiplying men, and the other productions of nature: that then it is that Kings may call themselves the image of God, whose will is perpetually directed to the creation of new beings. If they continue to make us fight and kill one another, in uniform, we will continue to write and speak, until nations shall be cured of this folly." We are certain our present heavy burdens are owing, in a great measure, to cruel and impolitic wars, and therefore we will do all on our part, as peaceable citizens, who have the good of the community at heart, to enlighten each other, and protest against them.

V. The present state of the Representation of the People, calls for the particular attention of every man, who has humanity sufficient to feel for the honour and happiness of his country; to the defects and corruptions of which we are inclined to attribute unnecessary wars, &c. &c. We think it a deplorable case when the poor must support a corruption which is calculated to oppress them; when the labourer must give his money to afford the means of preventing him having a voice in its disposal; when the lower classes may say, "We give you our money, for which we have toiled and sweat, and which would save our families from cold and hunger; but we think it more hard that there is nobody whom we have delegated, to see that it is not improperly spent; we have none to watch over our interests: the rich only are represented." "The form of Government since the Revolution, is in some respects changed for the worse: by the triennial and septennial acts we lost annual Parliaments: besides which, the wholesome provisions for obliging Privy Counsellors to subscribe their advice with their names, and against Placemen and Pensioners sitting in Parliament, have been repealed." It is said, that the voice of the people is the constitutional controul of Parliament; but what is this but saying, that the Representatives are naturally inclined to support wrong measures, and that the people must be constantly assembling to oblige them to do their duty? An equal and uncorrupt representation would, we are persuaded, save us from heavy expences, and deliver us from many oppressions; we will therefore do our duty to procure this reform, which appears to us of the utmost importance.

VI. In short, we see, with the most lively concern, an army of placemen, pensioners, &c. fighting in the cause of corruption and prejudice, and spreading the contagion far and wide; a large and highly expensive military establish-

ment, though we have a well-regulated militia; the increase of all kinds of robberies, riots, executions, &c. though the nation pays taxes equal to the whole land rental of the kingdom, in order to have his property protected and secured; and is also obliged to enter into separate associations against felonious depredations. A criminal code of laws sanguine and inefficacious; a civil code so voluminous and mysterious as to puzzle the best understandings; by which means, justice is denied to the poor, on account of the expence attending the obtaining it; corporations, under ministerial or party influence, swallowing up the importance, and acting under the voice of the people; penalties inflicted on those who accept of offices without conforming to the violation of their consciences and their rights; the voice of free inquiry drowned in prosecutions, and the clamours of the pensioned and interested; and we view, with the most poignant sorrow, a part of the people, deluded by a cry of the Constitution and Church in danger, fighting with the weapons of savages, under the banners of prejudice, against those who have their true interest at heart; we see with equal sensibility the present outcry against reforms, and a proclamation (tending to cramp the liberty of the press, and discredit the true friends of the people) receiving the support of numbers of our countrymen; we see the continuation of oppressive game laws and destructive monopolies; we see the education and comfort of the poor neglected, notwithstanding the enormous weight of the poor rates; we see burdens multiplied, the lower classes sinking into poverty, disgrace, and excesses, and the means of these shocking abuses increased for the purposes of revenue; for the same end, Excise laws, those badges and sources of oppression, kept up and multiplied. And when we cast our eyes on a people just formed in a free community, without having had time to grow rich, under a Government by which justice is duly administered, the poor taught and comforted, properly protected, taxes few and easy, and that at an expence as small as our pension-list, we ask ourselves, "Are we in England? Have our forefathers fought, and bled, and conquered for liberty? And did they not think that the fruits of their patriotism would be more abundant in peace, plenty, and happiness? Are we always to stand still or go backwards? Are our burdens to be as heavy as the most enslaved people? Is the condition of the poor never to be improved?" Great Britain must have arrived at the highest degree of national happiness and prosperity, and our situation must be too good to be mended, or the present outcry

cry against reforms and improvements is inhuman and criminal. But we hope our condition will be speedily improved, and to obtain so desirable a good is the object of our present Association; an union founded on principles of benevolence and humanity; disclaiming all connection with riots and disorder, but firm in our purpose, and warm in our affections for liberty.

VII. Lastly, we invite the friends of freedom throughout Great Britain to form similar Societies, and to act with unanimity and firmness, till the people be too wise to be imposed upon; and their influence in the Government be commensurate with their dignity and importance.

THEN SHALL WE BE FREE AND HAPPY.

By Order of the Society,

S. EYRE, Chairman.

In

In Hilary Term 1793, the following Information *ex Officio* was filed in the Court of King's Bench, by Sir Archibald Macdonald, then Attorney General, now Chief Baron.

(Middlesex to wit.)

BE IT REMEMBERED, that Sir Archibald Macdonald, Knight, Attorney General of our present Sovereign Lord the King, who for our said Lord the King, in this behalf, prosecutes, in his proper person comes into the Court of our said Lord the King, before the King himself at Westminster, on Wednesday next after the octave of Saint Hilary in this same term, and for our said Lord the King gives the Court here to understand and be informed, that our Sovereign Lord the King, before the printing and publishing of the false, wicked, scandalous and seditious Libel hereinafter next mentioned, (to wit) on the twenty-first day of May, in the thirty-second year of his reign, (to wit) at Westminster, in the county of Middlesex aforesaid, had, by the advice of his Privy Council, issued and caused to be published his royal Proclamation, whereby, after reciting that divers wicked and seditious writings had been printed, published, and industriously dispersed, tending to excite tumult and disorder, by endeavouring to raise jealousies and discontents in the minds of his faithful and loving subjects, respecting the laws and happy constitution of Government, civil and religious, established in this Kingdom, and endeavouring to vility and bring into contempt the wise and wholesome provisions made at the time of the glorious Revolution, and since strengthened and confirmed by subsequent laws for the preservation and security of the rights and liberties of his faithful and loving subjects; and that divers writings had also been printed, published, and industriously dispersed, recommending the said wicked and seditious publications to the attention of all our said Lord the King's faithful and loving subjects; and that his said Majesty had also reason to believe that correspondences had been entered into with sundry persons in foreign parts, with a view to forward the criminal and wicked purposes above mentioned, and that the wealth, happiness and prosperity of this kingdom did, under Divine Providence, chiefly depend upon a due submission to the laws, a just confidence in the integrity and wisdom of parliament, and a continuance of that zealous attachment to

the

the government and constitution of the kingdom which had ever prevailed in the minds of the people thereof, and that there was nothing which our said Lord the King so earnestly desired as to secure the public peace and prosperity, and to preserve to all his loving subjects the full enjoyment of their rights and liberties, both religious and civil; our said Lord the King therefore being resolved, as far as in him lay, to repress the wicked and seditious practices aforesaid, and to deter all persons from following so pernicious an example, by his royal proclamation so issued, solemnly warned all his loving subjects, as they tendered their own happiness and that of their posterity, to guard against all such attempts, which aimed at the subversion of all regular government within this kingdom, and which were inconsistent with the peace and order of society, and earnestly exhorted his said subjects, at all times and to the utmost of their power, to avoid and discourage all proceedings tending to produce riots and tumults; and our said Lord the King did thereby strictly charge and command all his magistrates in and throughout his kingdom of Great Britain that they should make diligent inquiry in order to discover the authors and printers of such wicked and seditious writings as aforesaid, and all others who should disperse the same; and our said Lord the King did further charge and command all his sheriffs, justices of the peace, chief magistrates in his cities, boroughs, and corporations, and all other his officers and magistrates throughout his kingdom of Great Britain, that they should in their several and respective stations take the most immediate and effectual care to suppress and prevent all riots, tumults, and other disorders, which might be attempted to be raised or made by any person or persons which, on whatever pretext they might be grounded, were not only contrary to the law but dangerous to the most important interests of this kingdom; and our said Lord the King did thereby further require and command all and every his magistrates aforesaid, that they should from time to time transmit to one of his said Majesty's principal Secretaries of State due and full information of such persons as should be found offending as aforesaid, or in any degree aiding or abetting therein, it being our said Lord the King's determination, for the preservation of the peace and happiness of his faithful and loving subjects, to carry the laws vigorously into execution against such offenders as aforesaid: nevertheless one *John Lambert*, late of the parish of St. Clement Danes, in the county of Middlesex, printer; *James Perry*, late of the liberty

Liberty of the Rolls in the said county of Middlesex, gentleman; and *James Gray*, late of the liberty of the Rolls aforesaid, gentleman, being wicked, malicious, seditious and ill-disposed persons, and being greatly disaffected to our said Lord the King, and to the constitution and Government of this kingdom, and wickedly, maliciously and seditiously designing, contriving and intending to disturb the peace and tranquillity of our Lord the King and of this Kingdom, and to scandalize, defame and vilify the constitution, laws and Government of this kingdom, and to bring the same into hatred and contempt with his said Majesty's subjects, and to infuse and instil into the minds of his said Majesty's subjects a belief that they were oppressed by his said Majesty's Government and abuses therein, and by means of cruel, impolitic wars, and unnecessary wars, entered into by his said Majesty against foreign powers, and to excite and stir up disloyalty, discontents and seditions amongst his said Majesty's subjects, and to seduce, instigate and encourage his said Majesty's subjects to resist and oppose his said Majesty in the administration of his Government, and in the exercise of the lawful powers and authorities vested in him by the constitution of this kingdom, on the twenty-fifth day of December, in the thirty third year of the reign of our said Lord the now King, at the Parish of St. Mary le Strand, in the county of Middlesex aforesaid, to compleat, perfect and bring to effect their said wicked and seditious contrivances and intentions, wickedly, maliciously and seditiously did print and publish, and cause to be printed and published, in a certain Newspaper called the Morning Chronicle, a certain false, wicked, scandalous and seditious libel, in the form of an address of a society for political information, held at the Talbot Inn in Derby, July 16, 1792, declaratory of their principles, &c. and directed to the friends of free Inquiry and the general good, in which said libel are contained (amongst other things) divers false, wicked, scandalous, malicious and seditious matters of and concerning our said Lord the King's Government of this kingdom, and of and concerning the constitution of this kingdom, according to the tenor and effect following (that is to say) " We " (meaning the society aforesaid) feel too much not to " believe that deep and alarming abuses exist in the British " Government, (meaning his said Majesty's government of " this kingdom) yet we are at the same time fully sensible that " our situation is comfortable, compared with that of the " people of many European kingdoms, and that as the times, " are

" are, in some degree, moderate, they ought to be free from
 " riot and confusion—III. Yet we think there is sufficient
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 " seventeen millions of annual taxes, exclusive of poor rates,
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 " reduced, without lessening the true dignity of the nation
 " (meaning this kingdom) or the Government, (meaning the
 " Government of this kingdom) and therefore wish for sa-
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 " concern the frequency of wars, (meaning amongst others
 " the wars of his said Majesty and his subjects with foreign
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 " must say, in the language of a celebrated author, we who
 " are only the people, but who pay for wars with our sub-
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 " themselves the image of God, whose will is perpetually
 " directed to the creation of new beings; if they continue
 " to make us fight and kill one another in uniform, we will
 " continue to write and speak until nations shall be cured of
 " this folly. We are certain our present heavy burthens
 " (meaning burthens of the subjects of this kingdom) are
 " owing, in a great measure, to cruel and impolitic wars,
 " (meaning cruel and impolitic wars entered into by his said
 " Majesty against foreign powers) and therefore we will do
 " all on our part, as peaceable citizens, who have the good
 " of the community at heart, to enlighten each other, and
 " protest against them. V. The present state of the repre-
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 " people of this kingdom in the parliament thereof) calls
 " for the particular attention of every man who has huma-
 " nity sufficient to feel for the honour and happiness of his
 " country, to the defects and corruptions of which we are
 " inclined to attribute unnecessary wars, &c. &c. We think
 " it a deplorable case when the poor (meaning the poor of
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" press them, (meaning the poor of this kingdom) when the
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 " venting him having a voice in its disposal, when the lower
 " classes may say we give you our money for which we have
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 " cold and hunger, but we think it more hard that there is
 " nobody whom we have delegated to see that it is not im-
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 " monopolies; we see the education and comfort of the poor
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 " standing the enormous weight of the poor rates; we see
 " burdens multiplied, the lower classes (meaning the lower
 " classes of the subjects of this kingdom) sinking into
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 " freedom throughout Great Britain to form similar societies,
 " and to act with unanimity and firmness, till the People
 " (meaning the People of Great Britain) be too wise to be
 " imposed upon, and their influence in the government be
 " commensurate with their dignity and importance; then
 " shall we be free and happy, by order of the society, S.
 " Eyre, Chairman," (meaning the Chairman to the said so-
 ciety). In contempt of our said Lord the King, in open violation
 of his laws, to the evil and pernicious example of all others in
 the like case offending, and against the peace of our said Lord
 the King, his Crown and dignity. AND the said Attorney Ge-
 neral of our said Lord the King, for our said Lord the King,
 further gives the Court here to understand and be informed, that
 the said John Lambert, James Perry, and James Gray, being wicked-
 ed, malicious, seditious, and ill-disposed persons, and wickedly
 and seditiously contriving and intending to disturb the peace
 and tranquillity of our said Lord the King, and of this king-
 dom, and to excite and stir up the subjects of our said Lord
 the King to hatred and contempt of our said Lord the King,
 and of the constitution, laws, and government of this
 kingdom, on the said twenty-fifth day of December, in the
 thirty-third year of the reign of our said Lord the now
 King, at the parish of St. Mary-le-Strand aforesaid, in the
 County of Middlesex aforesaid, to complete, perfect, and
 bring to effect, their said last-mentioned wicked and seditious
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 ditionally, did print and publish, and cause to be printed and
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 Lord the King, his Crown and dignity. WHEREUPON
 the said Attorney General of our said Lord the King, who
 for our said Lord the King in this behalf, prosecuteth for our
 said Lord the King, prayeth the consideration of the Court
 here in the premises, and that due proceſs of law may be
 awarded against them the said *John Lambert, James Perry,*
 and *James Gray*, in this behalf, to make them answer to our
 said Lord the King touching and concerning the premises
 aforesaid.

In Trinity term a Rule was made in the usual way, on the motion of the prosecutor, for a special jury. Forty-eight jurors were struck ; and in Easter term they were reduced by the parties to twenty-four. In the sittings after Easter, the cause came on, and seven of the special jurors came into the box. Sir John Scott, the then Attorney General, did not pray a tales, and the trial went off as a *remanet pro defectu juratorum*.

In Michaelmas term the prosecutor, on a motion of course, took out a rule for a new special jury. This the defendants thought irregular.

On Friday, the fifteenth day of November, the Hon. THOMAS ERSKINE moved the Court as follows :

" My Lord, the motion which I am about to address to the Court, will deserve your Lordship's particular attention, as it relates to one of the most essential rights and liberties of the subject, the trial by jury.

" Your Lordship may recollect, that at the sittings after the last term in this place, an information, filed by the Attorney General, against the proprietors and printer of the Morning Chronicle, for a supposed libel in that newspaper, was called on for trial in the ordinary course of things. Seven of the special jurors, struck under the rule obtained by the Crown itself for the trial of the cause, appeared, and came into the box to be sworn. But the Attorney General did not think proper to pray a tales to complete the panel.

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nel. The cause, therefore, of course, went off, *pro defectu juratorum.*

“ My Lord, if any special reason existed why the jury so appearing should not be permitted to try the information, when it came on again for trial, and the Crown had moved, upon such special matter, verified by affidavit, to discharge the original rule under which the jury was appointed, I should, according to the nature of the objections, have been prepared to give them an answer. But, my Lord, no such proceedings have been had or attempted. The Crown has made no objection to the jurors, nor any motion in Court to discharge the original rule under which the jury was empanelled: but assuming it to be the law that the rule was spent and expired, by the trial going over, for defect of jurors, they have, as a motion of course, drawn up, upon the signature of Counsel out of Court, obtained a second rule for striking a jury, as if no former rule had ever existed, and as if no jury had been struck under it.

“ I confess I was not a little surprised at this attempt to empanel a jury, without the consent of the defendants, between whom and the Crown the former had been reduced and ascertained under the first rule. On their part, I therefore now object to the proceeding, as totally illegal and hostile to the freedom of trial; and I humbly move that this new rule may be discharged.

“ I do not know that I am able to state, at this moment, any direct precedent for my motion, nor is it necessary that I should, because I found my application upon the whole statute law of the kingdom respecting the trial by jury, which is positive and unequivocal on the subject, which no practice can shake, and which no decisions of the Court, if there were any, could repeal or overrule.”

LORD KENYON. The application crosses all my ideas of the law upon the subject. It would be highly dangerous to impartial trial, if the juries were known to the parties so long before the trial. It is very strange if the law be so.”

MRS. ERSKINE. “ My Lord, the authors of our laws seem to have thought very differently on this subject. They seem to have entertained no jealousy, that the trial by the country, which was instituted for the people’s protection, could ever be too favourable to them; on the contrary, the most ancient statutes of the kingdom express no fears for the Crown, but for the subject only, and provide that jurors shall be struck so long before the day of trial, that the defendant may know them, and be prepared to take his challenges.

The

The act of the 42d of Edward III. chap. 11, expressly gives this reason. After stating that divers of the people had been disheartened and oppressed, from not having had knowledge beforehand of those who were to pass in the inquest, it enacts, that the names of the jurors should be returned into Court in the term before the assizes, and that, in the mean time, the parties, on demand, should view the same.

" The whole statute law, from that period, speaks the same language, down to the famous statutes of King William and Queen Anne, which give to defendants, accused of high treason, the names and abodes not merely of the jurors, but of the very witnesses to be examined against them on the trial. So far, indeed, is it from being true, that by the common law, a jury, once summoned, and not attending, could not be distrained again to appear at a future day, as is supposed by Mr. Justice Page, in Masterman's note, that they were bound to give their attendance from assizes to assizes, *in infinitum*, until the reign of William the Third.

" The statute of the 13th Edward I. chap. 30, had expressly directed, that upon the default of jurors, the Justices should put in the inquest no other than those first summoned; and this regulation was so much the settled law, that the *act of William, for the ease of jurors, and the regulation of trial*, recites, that as the law then stood, it often happened that upon causes going off at the assizes, for defect of jurors, the same jurors were obliged to attend again and again at the trial of one and the same cause, to their great expence and trouble, and after this preamble, a new *venire facias*, for the first time in the history of the law, was given to the parties, to bring in a new jury, upon the default of those empanelled under the first writ. It is therefore only by the effect of this statute, that a jury, once summoned, is discharged before trial; and the statute not extending, nor indeed relating at all to special juries, they remain upon the old footing. Special juries do not exist, as many people seem to suppose, by the authority of a modern statute; on the contrary, They are as ancient as the law itself, and were always struck, as they are at this day, by direction of the Court, when trials were had at the bar and not at *nisi prius*. The act of the 3d of George II. chap. 25, having no relation to such juries, except as it removes a doubt with regard to the legality of striking them for the trial of misdemeanors. This legality the statute recognizes; and putting special juries, struck in the Crown office, on the same footing with those in civil cases, directs them to be struck by rule, as they anciently were in cases

cases of trials at bar, and enacts, that *the jury so struck, shall be the jury to try the cause.*

"Indeed, so notorious is it, that a jury summoned, and not attending, could be distrained to appear again (till the law, as far as it related to common juries, was altered by the statute of King William.) We know that the whole jury process of the Courts at this day is founded upon that law; for the *venire* is always returnable on the last day of the term before trial, at which day it is entered on record, as of course, that default was made by the jurors summoned; and then the distringas issues to bring them in on the day in banc in the term following, unless the Justices shall come to the assizes in the interval; under which clause of *nisi prius*, the trials are all had. So that the process at this day, building fiction on reality, to give precision and uniformity to practice, ratifies that which is supposed now to have been contrary to all practice whatsoever. In ancient times, every man, in a civil cause, knew, upon the return of the *venire* in term, the jury that was to come at the assizes. The Sheriff now, by the act of the 3d of George II., returns one pannel for all, which effectually prevents a defect of jurors; but special juries remain untouched by that statute. But the reason and justice of the thing support my construction. The Attorney General alone can pray a tales in a criminal cause; for the statutes go no farther than to give defendants a right to pray the tales in penal actions, prosecuted *qui tam* with the Crown, but not in cases where the Crown is the prosecutor alone. It is true that the Attorney General now grants his warrant of course to a defendant to pray one, but he may legally refuse it; and the subject's liberties are not to rest upon the courtesies of the Officers of the Crown. What, then, is contended for in this right to change the jury? Why, nothing short of this, that if the Attorney General does not like his jury, he may forbear to pray a tales himself; he may also refuse his warrant, without which the defendant cannot pray one; and this he may do, *toties quoties*, until he has got a jury to his fancy. I am not arguing that Mr. Attorney General is likely to attempt this practice for such purposes; but the country is not to hold its rights upon the courtesy of the prerogative, or the honesty of those who may occasionally represent it."

Mr. Erskine then proceeded to state the modern cases, which clearly shewed that the practice of the Court bore him out in the law on the subject. He stated the King v. Hart, and the King v. Joddrell; but he relied implicitly, he said, on the law.

One of the Officers of the Crown Office handed up to Mr. Justice Buller, an opinion of Judge Page, in the 13th of George II. that a new jury ought to be granted; but Mr. Justice Buller said, the defendants should take a rule to shew cause, as it was of great importance to be argued and ascertained.

Lord Kenyon said, he thought it scarcely necessary; but they might take a rule. A rule was therefore granted.

On Monday, the 25th of November, 1792, the rule came to be argued.

Mr. BEARCROFT, on the part of the Crown, contended that the cases cited by Mr. Erskine were not in point. In the case of the King against Hart, the special jury of forty-eight had not been reduced to twenty-four by the parties, and the jurors had not come into Court. In the case of the King against Joliffe, the cause had been put off on account of some publications which might have influenced the jury. In the next term, a new jury was struck, so that the case was in point for the Crown, and it was so much the more so, as the new jury was moved for by a Solicitor as well versed in the general practice as any Solicitor of that Court. Their Lordships would agree with him in this description, when they heard that the Solicitor for the defendant in that cause was Mr. Lowten, and he was Solicitor also for the present defendants. In that cause, then Mr. Lowten had moved for a new trial, and here he opposed a new jury.—[Mr. Bearcroft was set right in the case of Joliffe. In that instance the trial first went off, because from the publications which had been made, the Court thought that the jury might be influenced. In the term after this, the cause came on again, and both parties agreed to have a new jury. A second time it was put off, through the delicacy of Mr. Justice Gould; and on the third time it was brought on again, and the prosecutor moved for a new jury, without any pretext of influence, or of any other argument for a new jury. This, Mr. Lowten, as Solicitor for the defendant, (and who had not been employed in the beginning of the cause) objected to, and the Court refused.]

Mr. Bearcroft read from the notes of the late Mr. Masterman, one of the Secondaries of the Crown Office, a case where it was his opinion, that a new jury was conformable to the practice; and he quoted also a cause against Lord Charles Fitzroy, where Mr. Lowten had also, as Solicitor for the defendant, moved for a new jury, and had succeeded; but he owned, that in this case it had been consented to by both parties.

Mr

Mr. Bearcroft then said he would argue the question on the reason of the rule. It struck him as a most important point, indeed, that juries should not be continued from term to term, as they might be tampered with by the parties; a thing so outrageous to justice, and so opposite to the spirit of our jurisprudence, that it had been ever the study of the Courts, and indeed the very aim of Parliament, in making the statute of the 3d of George II. to prevent juries from becoming permanent, or from being so long known beforehand, as to be subject to influence. That in regard to the prayer for a *tales*, though undoubtedly the defendant must have the warrant of the Attorney General to enable him to pray a *tales*, yet the Attorney General never denied such a warrant. Another argument against the continuance of a jury was, that it must subject gentlemen to great inconvenience—they never would know when they were to be discharged. Here seven of them attended to do their duty, and they were again to be called upon; eleven of them might attend, and still be subject to be called again: there was no end of this, and he owned he did not know how they could call upon them again, for he did not know an instance of an *alias disstringas* to bring up special jurors.

Mr. ADAM stated, on the part of the Defendants, that there were many instances in the books, especially in Brooke's Abridgement, where an *alias disstringas* had gone to compel the attendance of jurors of all descriptions.

Mr. Justice BULLER said, that as this case comprehended so important a rule of practice, he had taken pains to inform himself on the point, and he had found a case which, in his mind, determined the rule. He would read it, and then Mr. Bearcroft would see what he could make of the argument. Mr. Justice Buller then read a manuscript note of the case, the KING v. FRANKLIN, the publisher of the famous paper of the CRAFTSMAN. It was important to remark the time and the Judges—it was the 5th of Geo. II. only three years after the law recognizing special juries in misdemeanors had passed, and the Judges on the bench were Mr. Justice, afterwards Lord Chief Justice Lee, Mr. Justice Page *, &c., and the Crown Lawyers were men of the first eminence. Franklin was convicted of printing and publishing a libel in the Craftsman. The case was only so far different from the present, that the defendant there

* The same judges who are supposed to have decided the case of the King against Waring.

moved the Court to reverse the judgement, because the cause, after being put off from one term to another, had not been tried by a new jury. Here the defendants moved to continue the same jury. The doctrine was the same in both cases, only that in this case, it is upon the application of the Attorney General that the new jury is required; in that case the Attorney General or the Crown contended that the old jury should continue. Chief Justice Lee pronounced the opinion of the Court, which Mr. Justice Buller read. The opinion of the Court was, that the words of the statute were express, and could not be departed from, unless cause could be shewn that there had been some irregularity in the striking of the jury, or in the reducing, or in some part of the proceeding, or in the writ of venire, or otherwise. The words of the statute were, "that the jury so struck and so reduced, shall be the jury to try the issue joined in such cause," The jury were not dissolved until the cause was determined, and an *alias* *distringas* might issue. The opinion was at great length, and detailed the practice of striking juries by the ancient statutes downwards, and shewed, that by the act then recently passed, the 11th of George II. the alteration with respect to juries, related only to the common jury, and left the practice as to special jurors exactly as it stood by the ancient law, except as it declared that special jurors might be demanded by the Crown in cases of misdemeanor. In regard to common juries, it was thought hard and severe to compel their attendance from time to time; but the special jury was left by that act precisely as it stood before.— This opinion, Mr. Justice Buller said, delivered so soon after the act had passed, so solemnly and argumentatively, in a question discussed by such great legal characters, must, in his mind, determine the question. He concluded with saying, that he could not see how the Crown officers could go on without creating error on the record.

Lord Chief Justice KENYON said, he must bow to such great authority, though the inclination of his disposition was the other way. But a point so solemnly argued, (and where such a man as Mr. Pulteney, Earl of Bath, being implicated, error would have been pleaded, if they could have found error on the record), must decide the present case. He made no inquiry at all, and did not take into his consideration the merits of the question at issue between the present parties; but it was, in his opinion, of the utmost interest to criminal jurisprudence, that juries should not be subject to influence. It was that consideration which

which gave rise to the law for the balloting box. Every lawyer knew the necessity that there was for that statute; as all the provisions which had been previously made to guard against influence, had proved ineffectual, though any person convicted of trying to influence jurors, was subject to a penalty of ten times the amount of the object at issue in the cause. What held good as to civil suits was equally applicable to criminal prosecutions. The principle of the balloting-box was equally applicable to both; but it was impossible to resist the precedent, standing as it did upon so high authority.

Mr. Justice GROSE and Mr. Justice ASHURST were of the same opinion.

The case of the King v. Franklin*, therefore, decided this

* In consequence of that case, viz. *the King v. Franklin*, it became unnecessary for Mr. ERSKINE and Mr. ADAM, as counsel for the defendants, to say any thing on the part of the defendants; but it may not be unacceptable to know, by a short statement, how far the old practice confirms the good sense and authority of the case, the King v. Franklin.

Special juries existed long before the statute of the 3d of Geo. II. by the act of the parties; and that as well in misdemeanor as in other cases. One party applied for a special jury, and the other party consented; so that the special jury was then the result of compact between the parties. But when the parties had so contracted, the authority of the Court was necessary to give validity to the compact. Accordingly the Court, upon application, made a rule for a special jury; and that rule ran in the same words before the statute, that are used now since the statute. An observation, very material, especially in considering the last words. The rule ordered then, and it orders now, that 48 shall be returned; that the prosecutor shall strike 12 and the defendant 12; and that 24, the remainder of the 48, shall be the jury returned for the trial of the issue joined in that cause.

This being agreed between the parties, and enforced by a rule of Court, the parties, before the statute, chose their forum, and by this forum, their own compact, and the authority of the rule of Court, compelled them to abide; insomuch, that they could not get quit of the jury by the common mode of challenging the array; that is, challenging the whole pannel of jurors. Such challenge, after the rule of Court, being deemed, like every other breach of the authority of the Court, a contempt, by the party who should so challenge.

This had met with a decision in several cases, but particularly in the case of the King v. Burridge, for a misdemeanor, which came before the Court of King's Bench in Trinity term, 10 Geo. I. a very short time before the passing the act respecting special juries.

That

this question ; and the Court determined, that the rule for another

That case is reported in Lord Strange's Reports, Vol. 1. p. 593; in Lord Raymond, 1364; in Andrews' Reports, 52; in eight modern reports, 245; and in many other books; and the case, as reported in all of them, not only confirms the argument and statement above given, but explains the only remaining difficulty in the case, viz. the meaning to be put upon the words in the rule of Court, *that the jury shall be the jury returned for the trial of the issue in that cause.*

For the judges, in the reports given of their opinions, consider as synonymous, and meaning the same thing, the above phrase; and that they shall be the jury who shall actually try the cause; contrary to the construction contended for by the Crown, on the present occasion, where it was pressed that the statute and the rule were both satisfied, when the jury had been returned, although they had not actually tried the cause.

Soon after this case, that is, in the 3d of Geo. II. came the statute; and it is very material to observe, that the statute transcribes verbatim the latter words of the rule used before the statute. Therefore, whatever was the construction of those words in the rule, the same must be their construction in the statute. It has been shewn in what sense the judges considered the words in the rule, and it will not be contended that the words in the statute, "which said jury so struck shall be the jury returned for the trial of the said issue," can bear a different construction. There is, therefore, judicial authority, added to that of common sense, to settle the meaning of these words. The only other consideration in this case is, what change the statute made in the rights of the parties, if it made none from the words of the rule; and it is evident, that it did no more than convert into a statutory obligation, carried into execution by a rule of Court, what had been matter of compact, executed by a rule of Court; but that in all other respects, except that the one party was, after the statute, bound to agree to a special jury, if the other proposed it, the consequences were the same.

The disobedience to the rule remained a contempt, and the rule remained valid, unless the Court, for particular cause of corruption, or undue interference, properly verified, should see ground to have another jury; but that otherwise, the jury of compact or statute must continue.

This was the more material, because of the Attorney General's power to refuse the defendant a warrant to have a tales, to make up the special jury, if deficient, and of the common jury; which was so far from being an idle right, as mentioned by Mr. Bearcroft, that there was a case in which it was solemnly agitated, and which formed a ground of decision that the Attorney *could and ought*, in certain cases, to exercise the right. The King v. Jacob Banks, 6th Modern Reports, p. 246, as follows :

" And as to another objection that was made that such a course, " if tolerated, would be of great mischief; for then most profligate
" offenders

another special jury, obtained upon the motion of the Crown Lawyers, must be discharged.

" offenders would get themselves acquitted by surprize, or over hastening the trial, without allowing the Queen convenient time to manage her prosecution."

It was answered, " that there could be none, because in Crown causes there cannot be *nisi prius* or tales, without a warrant from the Attorney General, *who shall be sure to grant none if he find any such danger.*" And that such a thing may be at least by consent appears 1. Keb. 195. Rex. v. Jones. And the granting a *nisi prius* amounts to a consent.

COURT

COURT OF KING'S BENCH.

Monday, Dec. 9, 1793.

BEFORE THE RIGHT HON. LORD KENYON.

Eight only of the Special Jury, originally struck between the parties, and continued by rule of Court from the fittings after last Trinity Term to the present time, attended.

The Officer of the Court asked, if Tales were prayed?

Attorney General.—“ My Lord, as I cannot, on a second trial, have a Special Jury in this case, I will pray a Tales.”

The following were the names of the Jury:

SPECIAL JURORS.

MATTHEW KNIGHT, of Gun Dock, Esq.
 WILLIAM FARRINGTON, of Virginia Street, Esq
 NATHANIEL COLLIER, of Little Street, Esq.
 WILLIAM MARTIN, of Leicester Square, Esq.
 EDWARD BOWMAN, of Soho Square, Esq.
 THOMAS HANKIN, of Leicester Square, Esq.
 RALPH CLARKE, of Robert Street, Adelphi, Esq.
 RICHARD DEYKEN*, of Long Acre, Esq.

* On calling the name of Charles Barber, Esq. of Rupert Street, in the parish of St. James, Mr. George Barber, of Newport Street, in the parish of St. Anne, answered, and said he had received a summons by the officer of the Court, as a special juror in the cause, but which had been altered from Charles to George, and from Rupert Street, to Newport Street. Lord Kenyon did not see any objection to his serving, if the parties were agreed. The Attorney General acquiesced, and Mr. George Barber went into the jury box; but Mr. Erskine, for the defendants, contended not from any personal objection to Mr. Barber, whom they did not know, but merely for the regularity of the proceeding, that as they had received a list of names for the purpose of making inquiry concerning them, and could find no such person as Mr. Charles Barber, of Rupert Street, they held it to be irregular to admit a person of another name, in another street, of another parish to be of the jury. The objection was held to be valid, and Mr. Barber left the box.

TALES MEN.

TALES MEN.

HENRY HUBERT, of Abingdon Street, Coal Merchant.
 THOMAS BOYS, of Great St. Anne's Lane, Wire-worker.
 WILLIAM ADENEY, of Charles Street, Taylor.
 JOHN BARRET, of the Broadway, Coal Merchant.

Counsel for the Crown.

The ATTORNEY GENERAL.

Mr. BEARCROFT.

Mr. WOOD.

Solicitors.

Messrs. CHAMBERLAYNE
and WHITE.

Counsel for the Defendants.

The Hon. THO. ERSKINE.

Mr. ADAM.

Solicitor.

Mr. LOWTEN.

The Information was opened by Mr. WOOD.

MR. ATTORNEY GENERAL.

Gentlemen of the Jury,

THE Information charges the defendants with having printed and published a seditious libel, the contents of which you have now heard stated. The Information originally was not filed by me, but by my predecessor in office, who then was, as you now are, sworn to discharge an important duty to the Public, according to the best of his judgement. It has since fallen to my lot to execute that duty, in stating to you the grounds upon which this Information has been filed. And I have no difficulty in saying, that previous to my coming forward for this purpose, I thought it incumbent upon me to consider, whether in the office which I now hold, I should, of my own accord, have instituted this prosecution; because I thought that it became me not merely to follow up the measures of that highly-respectable character, and to bring his opinion before a jury, but to be able, in so doing, to say that I approved of those measures, and concurred in that opinion; and to act exactly as he had done, according to the best of my judgement, for the Public. Had I been clearly of opinion that this paper was not fit for the consideration of a jury, I have no hesitation in confessing that I should certainly have discontinued the prosecution. You,

Gentlemen of the Jury, I am sure, will do me the justice to believe that I am not capable of the impertinence of saying, that because I may think this paper fit for prosecution, and may think the defendants guilty, that you therefore must think so too. The prosecution does nothing more than declare, that the paper is a proper subject for the discussion of a jury, and as such, that I consider myself as bound to bring it forward in the course of my professional duty. With respect to the guilt or innocence of the defendants in publishing this paper, that question which falls to your consideration I am perfectly satisfied to leave to your decision. This is a cause of the highest importance, as, indeed, every cause which involves a criminal charge must be important, but this more particularly so from the nature of the charge. It is connected with the press, which has ever been deemed the great palladium of British freedom. In every case in which it is concerned, it is natural, therefore, that the most watchful attention of Englishmen should be excited. It is of great consequence, then, in the first instance, to ascertain what properly constitutes the liberty of the press; what are its bounds, and how far it extends; and on this subject I shall take the liberty of reading to you the sentiments of a character of the highest legal authority, namely, the late Mr. Justice Blackstone.

"In this and the other instances which we have lately considered, where blasphemous, immoral, treasonable, schismatical, seditious, or scandalous libels are punished by the English law, some with a greater, others with a less degree of severity, the *liberty of the press*, properly understood, is by no means infringed or violated. The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter, when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the Revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government; but to punish (as the law does at present) any dangerous or offensive writing, which, when published, shall, on a fair and impartial trial, be adjudged of a pernicious tendency, is necessary

cessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus the will of individuals is still left free; the abuse only of that free will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or inquiry; liberty of private sentiment is still left; the disseminating or making public of bad sentiments, destructive of the ends of society, is the crime which society corrects. A man (says a fine writer on this subject) may be allowed to keep poisons in his closet, but not publicly to vend them as cordials. And to this we may add, that the only plausible argument heretofore used for the restraining the just freedom of the press, ‘ that it was necessary to prevent the daily abuse of it,’ will entirely lose its force, when it is shewn (by a seasonable exertion of the laws) that the press cannot be abused to any bad purpose, without incurring a suitable punishment; whereas it never can be used to any good one, when under the control of an inspector. So true will it be found, that to censure the licentiousness, is to maintain the liberty of the press*.”

These principles of the law of England, thus laid down by this great man, must be admitted to be incontrovertible. The law allowed defendants in this, as in every other case, a fair impartial trial, upon the result of which they were to be adjudged guilty, or acquitted of the charge exhibited against them; and this principle has been explained by the last act of Parliament, for removing doubts of the functions of juries in cases of libel; the meaning of which act I take to be, that the jury shall try these charges of libels precisely as they try any other charge of a criminal nature; that they shall hear the case with attention, and hear it impartially; that they shall hear the advice of the Bench in point of law, and then apply the law, as they understand it, to the facts that appear in evidence, and then they shall acquit or find guilty, as to them shall appear right. The question in this case is, “ Whether, upon the facts, as they shall appear in evidence, under the law, as you shall understand it, after the advice of the learned Judge, the defendants be guilty, as the Information charges them to be?” With respect to the fact, the paper stated in the Information, appeared in the Morning Chronicle on the 25th of December, 1792. And here I must particularly beg the attention of the jury to the date of the libel. This paper, charged to be the libel, is dated at the Talbot Inn, at Derby, on the 16th of July,

* Blackstone's Commentaries, Vol. IV. page 151, 8vo edition, 1791.

1792, and it did not appear in the Morning Chronicle till the 25th of December, 1792. Thus you will observe that the date of the paper preceded its appearance in the Morning Chronicle six months. Having said this upon the paper itself, it is now my duty to the defendants to state that it appeared not to be a publication actually composed by the defendants, but was said to be, with what truth I do not know, composed and agreed to at a Society for Political Information, held at the Talbot Inn, Derby, signed S. Eyre, Chairman. Whether there was such a person, or if there was, whether he was the author, is to me entirely unknown. It was said to be unanimously agreed to by the persons holding the meeting, and ordered to be printed; how it happened that that order was not executed until the 25th of December, I am unable to explain to you. But be that circumstance as it may, the defendants are the persons interested in the property and management of the newspaper in which this publication appeared. And I apprehend that the proprietors, printers, and publishers of a newspaper are responsible for whatever it may contain, unless it be admitted as a doctrine, that men may carry on a trade, which is a source of great profit and emolument, entirely through the medium of servants, without being themselves in the finallest degree accountable. Can it be deemed a sufficient apology for the evil tendency of a publication, of which they reap the advantage, that they are not its authors, or that they had no immediate hand in its insertion, and therefore are not bound to answer for what they themselves did not actually commit? On the contrary, I apprehend, that by adopting any publication, they become liable in law for the consequences of that publication, as much as if they were themselves the authors. It is true, that there are many circumstances to be considered, either by me in moving judgement, or when it comes to be determined by the Court, what ought to be the nature and extent of the penalty. The consideration of the degree of guilt incurred by the particular act, might then be attended to, independent of the law of the case. Negligence, omission, inadvertence, all of which, however, constituted a degree of criminality, might then, perhaps, properly be urged as circumstances of extenuation. Though this paper, therefore, appeared in the Morning Chronicle, not as the projected act of the defendants, or of either of them, but as an advertisement signed by a Mr. Eyre, still it was a publication for which the defendants, in their capacity, as connected with this paper, were clearly answerable. Another circumstance which deserves your attention is, the time

time at which this advertisement was brought forward; you will find in the same paper in which it appeared, a vast number of advertisements from various associations in different parts of the kingdom, stating that there had lately been many seditious writings circulated with the greatest industry, and from the worst intentions, which had already done much mischief, and expressing a determination to take every method in future to discountenance and suppress such publications. You are then to consider how far these advertisements might operate as an antidote to the statement contained in this publication, you are to take into review the whole of the paper and advertisements, that you may be able to judge fairly of the tendency of the contents, and the intention of the writers; you will then decide whether this paper was published with a peaceable temper, and from upright intentions. I have nothing to say, in order to exaggerate the case, or influence your decision; I have never had occasion to do so in any instance; it is neither my duty nor my wish in the present, and, I trust, that no man in my situation will ever do so upon any future occasion. All cases of which the law takes cognizance, and which are to be determined by ascertaining facts, and applying the law to them, are, thank God, safe in the hands of a Jury, the best guardians of our rights. Every thing in this country that deserves to be called a blessing, is indubitably deposited in their hands, as well as the power to apply a remedy, wherever their interference was called for to check the progress of an evil. It was from our blessings being vested in their hands, that we derived our security for their enjoyment, and our confidence in their duration. It is for you, Gentlemen of the Jury, exercising your privilege in its full extent, from the facts which I shall now lay before you, to judge of the tendency of this paper, which is the subject of prosecution; from the Bench you will hear laid down, from the most respectable authority, the law which you are to apply to those facts. The right of every man to represent what he may conceive to be an abuse or grievance existing in the government of the country, if his intentions in so doing be honest, and the statement made upon fair and open grounds, can never for a moment be questioned. I shall never think it my duty to prosecute any person for writing, printing, and publishing fair and conscientious opinions on the system of the government and constitution of this country; nor for pointing out what he may honestly conceive to be grievances; nor for proposing legal means of redress. But was this the case with respect to the present publication? Did the mode in which the writers exposed what they considered as the abuses

abuses of the constitution, indicate a peaceable temper, or honest intentions, and a desire only to obtain redress by legal and constitutional means? Did not this paper, on the contrary, describe the whole system as one mass of abuse, grievances, misery, corruption and despair, not so much as bringing forward one alleviating circumstance, or affording even a ray of hope? (Here Mr. Attorney General read some extracts from the paper). It attacked the government in every branch, in its Legislature, in its Courts of Justice, which had ever been deemed sacred, and, in short, represented all as equally corrupt and oppressive. There was no circumstance mentioned fairly, that the Public might be left to judge freely upon their situation. What could be the tendency of such a representation, but to excite murmurs and inflame discontent, without effecting one good purpose? If a man wishes to state honestly what he conceives to be a grievance, let him do it candidly, and propose what he conceives to be the proper means of redress. Let him not take one side of the picture only, or confine himself entirely to an unsavourable view of the subject, but let him balance the good with the evil, let him enumerate the blessings as well as the inconveniences of the system, and while he points out abuses and errors, not forget, likewise, to enumerate wise and salutary regulations; such a conduct only could answer the purposes of candid and useful discussion. The contrary conduct adopted in this paper could only have a tendency to unsettle men's minds, and stir up sedition and anarchy in the kingdom. I never will dispute the right of any man, fully to discuss topics respecting Government, and honestly to point out what he may consider as a proper remedy of grievances; every man has a right so to do, if the discussion be fairly and temperately conducted; I never will stand against such a person, even though I should differ with him in my opinion of the grievance, or disapprove of the proposed means of remedy. But when men publish on these points, they must not, as in the present instance, do it unfairly and partially; they must not paint the evil in the most glowing colours, while they draw a veil over the good. The writers of this paper, in describing the government of this country as productive only of one scene of misery, must have acted contrary to their own knowledge of its blessings, and in opposition to the sense which they could not but perceive was entertained by the people at large of the happiness of their condition. To what motives, I will ask, can such a representation be ascribed, or what are the effects to which it is naturally calculated to lead? Are the motives such only as can be set down to fair and honest intention,

tion, and the effects only such as can terminate in a legal and peaceable line of conduct? We are to consider too, that this mode of representation is adopted with respect to a constitution which has been the admiration of the wisest and best men in all ages, who have thought it barely possible that a constitution should exist so nearly approaching to a model of perfection. It is a constitution under which a greater degree of happiness has been enjoyed than by the subjects of any government whatever, and the sense entertained of its blessings depends not upon the vague result of theory, but the solid conviction of experience. These blessings have, in a great measure, sprung from the properly regulated freedom of the press; a freedom therefore, which it is more dangerous to abuse; and on maintaining that freedom on its proper principles chiefly depends our security for the enjoyment of those blessings. That this country has enjoyed a greater sum of happiness under its present constitution than any other, depends not merely upon the testimony of our own experience; let us recur to the evidence of history; we will be more deeply impressed with a sense of our present felicity; let us take a view of the situation of the subjects of the other European governments, we will be more strongly convinced of the superiority of our own. What then do the writers of this paper mean, when they say "that we feel too much not to believe, that deep and alarming abuses exist in the British Government; yet we are at the same time fully sensible, that our situation is comfortable, compared with that of the people of many European kingdoms; and that as the times are in some degree moderate, they ought to be free from riot and confusion." Let this paragraph be taken by way of illustration. When they talk of our situation being comfortable compared with that of *many* European kingdoms, what need, I will ask, for this qualification? Is there any European Government that in point of real liberty and actual comfort can be compared with the British constitution? In this country we have the fullest security for the possession of our liberty, and the enjoyment of our property, the acquisition of which must be the greatest spur to every honest and laudable exertion. But on the 25th December, 1792, while this country was actually experiencing the blessings resulting from its admirable constitution, the principles which this paper seemed to recommend were producing very different effects in a neighbouring country. The effects which had there been produced did not surely hold out to British subjects any encouragement, to adopt a system of experiment and innovation. The result of this in my mind, is that no man

man should be at liberty, without a specific object, to state truly or falsely what appears to him to be a grievance merely for the purpose of exciting a spirit of general discontent, which I will venture to say, never can be called into action without endangering the public prosperity and happiness. We have always been in the habit of regarding the revolution as the greatest blessing that ever befel this country. But how do the writers of this paper reason with respect to this event? They enumerate all the abuses which they pretend have since crept into the constitution, while they mention none of the many improvements which have taken place since that period. Is this, I will ask, a fair mode of stating the question? Besides, they shew themselves ignorant of that Revolution by talking of the annual Parliaments which we then lost. What was the end of all this? The cause of truth and justice can never be hurt by fair and temperate discussion; if you, Gentlemen of the Jury, consider this paper as coming under that description, you will of course acquit the defendants. Look at the beginning and conclusion of their paper. You will find that they set out with declaring that they are in pursuit of truth in a peaceable, calm, and unbiased manner, and from an opinion that the cause of truth and of justice can never be hurt by temperate and honest discussion, that they claim the right to associate together merely for the communication of thoughts, the formation of opinions, and to promote the general happiness. You will find that they conclude thus, "We hope our condition will be speedily improved, and to obtain so desirable a good is the object of our present Association; an union founded on principles of benevolence and humanity; disclaiming all connection with riots and disorder, but firm in our purpose, and warm in our affections for liberty." It is with you to decide whether you think the general tenour of this paper consistent with the principles assumed at the beginning and asserted at the end. If you shall judge that it contains matter very inconsistent with these principles, you are then to consider whether in a case like this, *bumble language ought to ransom strong faults.* If you shall be clearly of opinion that the paper has a different tendency from that which is professed in the outset and conclusion, and that the defendants themselves were aware of this tendency, you are then bound by your oath, and by the law of the country, to find the defendants guilty. Once more, as to the contents of this paper; you will find that the taxes are loudly complained of, but that not a word is said of the general wealth and prosperity of the kingdom. But let a deduction be made of the national taxes from the amount of

of the national wealth, and I am confident that this country will appear in a higher state of opulence and prosperity than it ever was at any former period. What purpose then can such partial and unfair statements answer, except to inflame the discontented and encourage the seditious? Whatever I have said of the tendency of this paper, I have stated only as my own opinion, it does not follow that the society at Derby might not view the subject in a very different light. All that my duty demands is, solemnly to declare that I considered this prosecution, though not originating with myself, as a proper case to be submitted to the consideration of a jury. You have now heard from me almost all that I intended to say at present, or thought necessary to submit to you, except what may fall from my learned friend shall require me to add some farther observations in reply. You will hear from the evidence all the facts which the defendants have to urge in their own justification, and from his Lordship all that shall appear to him to be the law on this subject. I now leave the matter to your decision. If you think that the defendants ought to be acquitted, I will retire from the court with a full conviction, not inconsistent however with that respect which I owe to your decision, that, in bringing this matter before you, I have acted according to the best of my judgment.

Mr Wood, the junior counsel on the part of the prosecution, was then proceeding to call witnesses, and Mr. Berry was called, when the counsel for the Defendants said he was instructed to save the Court all this trouble, as the Defendants were anxious to try the question on its own merits. As counsel for the Defendants, he therefore admitted that *John Lambert*, charged in the information as printer of the *Morning Chronicle*, was in fact printer of that paper; that the paper was purchased at the printing house; and that the Defendants, James Perry and James Gray, charged in the information as proprietors of the same paper, were in fact so. If these were the facts meant to be ascertained by witnesses, they would spare the Court unnecessary time and trouble, by admitting them fully and unequivocally.

The Attorney General said these were all the facts they meant to establish by proof, he thanked his learned friend for the admission.

The Hon. THOMAS ERSKINE then rose for the DEFENDANTS.

With the two Gentlemen charged in the information, as proprietors of the *Morning Chronicle*, I have been long and well acquainted. Of Mr. JOHN LAMBERT, who conducts the mechanical part of the printing business, I have no personal

nal knowledge; but from my intimate acquaintance with the other two, I have no difficulty in saying, that if I had in my soul the slightest idea that they were guilty as charged in the information, of malicious and wicked designs, I should leave the task of defending them to others. Not that I conceive, that I have any right to refuse my professional assistance to any man who demands it; but I have for a day or two past been myself so extremely indisposed, that in the present moment I feel myself scarcely adequate to the common exertion of addressing the Court; and it is only from the fullest confidence in the innocence of the defendants that I come forward for a very short space to solicit the attention of the Jury. You, Gentlemen, indeed, are the sole arbiters in this cause, and to you it belongs to decide on the whole merits of the question. Mr. Attorney General has already given a history of the prosecution, which was originally taken up by his predecessor, now called to a high situation in his profession. I do not mean by any thing I shall say to impute unbecoming conduct to either of those respectable Gentlemen for the part which they have taken in this business: they indeed, as my learned friend has candidly stated, brought it forward, because they considered it as a proper matter for the discussion of a Jury. It is not therefore to be inferred, that they would not have acted so, except from a full persuasion of the guilt of the defendants: but be this as it may, the weight of their characters ought to have no influence upon your minds against the defendants. It would be very dangerous to justice indeed, if because a charge was brought by a respectable Attorney General, it was supposed to be an evidence of the guilt which ought at all to bias the judgment or affect the decision of the Jury. It is the privilege of every British subject to have every part of his conduct tried by his peers, and his guilt or innocence determined by them. In this case Mr. ATTORNEY GENERAL has given no judgment; he has taken up the business merely in the course of his professional duty. The whole of the matter comes before you, Gentlemen of the Jury, who of course will reject every thing that might have a tendency to influence your decision independently of the merits of the cause, and will suffer no observation that either falls from me or my learned friend, to interfere with your own honest and unbiased judgment. You are to take every thing that relates to the case into *your own* consideration; you are to consult only *your own* judgments; you are to decide, as you are bound by your duty, agreeably to your own consciences; and your right to decide fully on every point, is clearly ascertained by the law of *Liberis.*

bels. To the act lately passed, you are to look as the only rule of your conduct in the exercise of your functions. With respect to the interpretation of that act, I must confess that my learned Friend and I materially differ. In one principle, however, we entirely agree, that a cause for a Libel is to be tried exactly as any other criminal cause: this point, indeed he has most correctly stated. When a man accused of a Libel is brought before a Jury, they are to consider only the mind and intention with which it was written, and accordingly as they shall find that, they are to form their decision of guilt or innocence. They are to dismiss every other consideration, and allow themselves to be biased by no motive of party interpretation or political convenience. There is this essential difference between Civil and Criminal cases. in criminal cases, the Jury have the case entirely in their own hands; they are to form their judgment upon the whole of it, not only the act alledged to be criminal, but the motive by which it is influenced, the intention with which it was committed, and according to their own opinion of whatever appears upon the face of the transaction, they can find a man innocent or guilty: and their verdict is conclusive. Not so in Civil cases; in these the Jury are bound to abide in their decision by the law as explained by the Judge; they are not at liberty to consult their own opinion. For instance, if I am deprived of any part of my property, the loss of my property lays a foundation for an action, and the fact being found, the Jury are bound to find a verdict against the person who has occasioned my loss, whatever might be his intentions. Here the Judge pronounces the law, the Jury only find the fact. The law and fact are distinct and separate, as light from darkness; nor can any verdict of a Jury pass for a farthing in opposition to the law, as laid down by the Judge, since the Courts have a power to set such a verdict aside. But in criminal cases, the very reverse was really the case; they were inseparably joined; the intention of the party accused was the very pith of the case. Every man becomes criminal only in the eyes of God and man, as far as his mind and intention in committing any act has departed from the great principles of rectitude, by which he is bound as a moral agent, and the indispensable duties which he owes as a member of Civil Society. It is not the act itself, but the motive from which it proceeds, that constitutes the guilt of the individual; and therefore every man, not bound to load himself with imputed guilt, where he is at liberty to assume a pure intention, pleads in the first instance not guilty. Such are the words which

the justice and clemency of our laws have put into the mouth of the person accused; not requiring him to condemn himself by the direct evidence of bad intention, and leaving him the right of acquittal, if the circumstances of the transaction shall be found to exculpate his motives.

" The criminality of a person under the Libel Act, is not to be taken as an inference of law from the fact, as Mr. Attorney General has stated it; but (if I may, as one of the authors of that bill, be allowed to interpret its meaning) it connects and involves the law and the fact together, and obliges the Jury to find in this crime, as in all others, by extrinsic as well as intrinsic means, the mind and intention with which the fact was done. Nothing can be more simple than the doctrine. It goes directly to the reason of the thing. Two men, for instance, are in company, and one of them is killed. It is not an inference in the law from the fact of the killing that the person was guilty of murder—it might be man-slaughter, justifiable homicide, chance-medley, or it might be murder: the fact does not infer the crime: it is the intention with which the fact was committed, and this the Jury are bound to discover and decide upon from all the accompanying circumstances. If I have been wrong in holding this opinion, all my opposition to that great luminary of the law now departed, but who will always live in public memory, was wrong and false; but reverencing that high and venerable authority, the splendor of whose talents have aggrandized the age, and perhaps ages will pass without producing his rival, I still opposed him on the doctrine that the law of libel was an inference from the fact, and now the Legislature have solemnly confirmed my opinion, that the law and fact are compounded together, and are both to be found by the Jury. I could not have held up my head in this court, nor in society, if it had been adjudged otherways; and how my learned friend can hold an opinion that the question of libel is to be tried precisely like all other criminal cases, and yet that criminal intent is an inference of law, I am utterly at a loss to determine. I aver that you are solemnly set in judgement on the hearts of the defendants, in the publication of this paper, and that you are to search for their intention by every means which can suggest itself to you---that you are bound to believe in your conscience that they are guilty of malicious and wicked designs, before you pronounce the verdict, GUILTY. It is not because one of them published the paper, or because the others are proprietors of it, but because they were, or were not, actuated by an evil mind, and had seditious intentions, that you must find

find them guilty or not guilty. Such was the opinion of the venerable Judge Hale; and he clearly stated that such should be the charge given to you by the Judge. It is their sacred function to explain to you their opinion, but not to force it upon you as a rule for yours. A Jury will always listen with reverence to the solemn opinion of the Judge, but they are bound to examine that opinion as rigorously as that of an advocate at the bar; for they cannot, and they ought not, to forget that a Judge is human, like themselves, and of course not exempt from the infirmities of our species. I do not say this to inspire you with any jealousy of the explanations which may be given you by the noble and learned Judge who now presides with so much wisdom, integrity, and candour, in the seat of justice, and whose influence I am confident can only be properly exerted, while to his ability in explaining the law, he unites that impartiality which so eminently distinguishes him in the discharge of the duties of his office.

" I now come to the consideration of the question, what is the present charge against the defendants? Let us look to the indictment, which sets out with referring to his Majesty's Proclamation which had appeared against all seditious writings, previous to the publication of the libel. I will not here talk of the propriety of that proclamation: it is not now my business to enter into political questions; I have a privilege to discuss them in another place. I will suppose, then, that proclamation to have been dictated by a wise and prudent policy; to have been a measure of salutary precaution and useful tendency. I will only ask, why this proclamation was issued? It made its appearance at a period the most extraordinary and eventful, that had ever occurred in the annals of mankind; at a period when we beheld ancient and powerful monarchies overturned and crumbled into dust, and republics rising upon their ruins; when we beheld despotic monarchy succeeded by the despotism of anarchy. In this state of alarm and confusion, and devastation in other countries, the defendants are accused by this information of wickedly, maliciously, and seditiously endeavouring to dislodge his Majesty from the hearts of his subjects, and to alienate the people of England from what their affections were riveted on--a limited, well regulated monarchy. The proclamation appeared professedly to check a spirit of innovation, which had already displayed itself by such alarming effects in a neighbouring country, and which it was to be feared might in its progress become fatal to all establishments. How, then, can this paper be deemed seditious, in the spirit of that proclamation?

tion? It was not surely against a reform in our own Constitution, which this paper recommends, that the proclamation was pointed, but against those who, in imitation of that neighbouring country, wished to establish a republican anarchy. Can any man produce a single expression which, in the smallest degree, countenances such a system? How, then, can this paper be urged to be published in defiance of his Majesty's authority, or to have a tendency to alienate the minds of his subjects from his Government? A proclamation is always considered as the act of Ministers; it becomes the fair subject of discussion; nor do the contents of this paper at all breathe a spirit, either disrespectful to his Majesty's person, or injurious to his Government.

" If you, gentlemen of the Jury, can think that the defendants were actuated by the criminal motive not of wishing to reform and restore the beautiful fabric of our Constitution, somewhat impaired by time, but to destroy and subvert it, and to raise on its ruins a democracy or anarchy, an idea at which the mind of every honest man must shudder, you will find them guilty. Nay, if any one man knows or believes them to be capable of entertaining such a wish, or will say he ever heard or had cause to know that one sentence intimating any thing of that nature ever fell from the lips of any one of them, I will give them up. How they came to be so charged upon the record, I cannot tell; there are not among his Majesty's subjects men better disposed to the government under which they live than the defendants. There have appeared in the Morning Chronicle, day after day, advertisements to a vast number, warning the people of this country against seditious persons, and against the effects of seditious publications. How any Jury can be brought to think the defendants are what they are stated to be on the record, I know not. The information states, that the defendants being wicked, malicious, seditious and ill-disposed persons, did *wilfully, wickedly, maliciously, and sedulously*, publish a certain *malicious, scandalous, and seditious libel* against the Government of this kingdom, against its peace and tranquillity, and to stir up revolt, and to encourage his Majesty's subjects to resistance against his person and government. This is the charge. All records have run in this form from the most remote antiquity in the law of England, for the purpose of charging the defendant expressly and emphatically with an evil intention. So we charge a man accused of treason; so of murder; so of all the worst and most dangerous crimes; first, we begin with the intention, and then we state the overt act as evidence of that intention which constitutes the crime.

crime. Now the record charges these defendants with this evil intention, and that in order to give effect to that intention, they did publish the paper now before the Jury. Such is the charge. Mr. Attorney General has stated to you in his opening, that if it shall appear to you, that the paper in question was not written with a good intention by its authors, that then the defendants are guilty of the crime imputed to them upon the record. This I deny. Your Lordship will recollect the case of the King and Stockdale, and I shall leave to the Jury in *this*, as your Lordship did in *that case*, the question of the intention of the party from the context of the whole publication, and the circumstances attending it; and upon this, I will maintain that it is not sufficient that it should appear the paper was written with a criminal intention by its author, or that the paper itself was criminal, but that it must also appear that the defendants *published it with a criminal intention*. Here, as in every other case, the great adage of the law is to be recollected: *actus non facit reum*; the mere act, taken by itself, and separated from the intention, can never in any instance constitute criminality. There is no evidence who are the authors of this paper; the Attorney General has not proved, or shewn in any way that the person who composed the paper, was of the description which the record states the defendants to be. If the design of the writers of this paper was so mischievous, then the society that gave it birth, were seditious and evil-disposed men.— What steps have been taken to discover, and hunt out this treason? Have the society been prosecuted, or any of its members? Has the writer been sought after and punished? No such thing. At Derby all is quiet. No sedition has been found lurking there, and no prosecution has been instituted against any person whatever for this paper.— But it has been said, the paper itself will prove the seditious design. After reading it over and over again, and paying to it all the attention possible, I protest that I cannot discover any such tendency in the paper; on the contrary, I can very well conceive, that the man who wrote it, might honestly be induced to write and circulate it, not only with the most unblemished intentions, but from motives of the purest attachment to the Constitution, and the most ardent wishes for the happiness of the people.

“ I can conceive that he had no other object in pointing out the defects of the Constitution, than to shew the necessity of a reform which might bring it back to its ancient principles, and establish it in its original purity. Animated with those wishes, the author was naturally enough led to

advert to what was passing on the continent of Europe, and to consider how far it might affect the interests of this country and the attainment of his favourite object. He was thence led to conclude, that nothing could be more fatal to this country, or more likely to increase the calamities under which it already suffered, than an interference in those cruel and destructive wars which already ravaged Europe, and against which it became every good citizen, as well as every friend to humanity, to enter his protest. This may be gathered from the conclusion of the fourth section of the paper : “ We are certain our present heavy burthens are owing, in a great measure, to cruel and impolitic wars, and therefore we will do all, on our part, as peaceable citizens who have the good of the community at heart, to enlighten each other, and to protest against them.”

It is evident that the author considers the state of the representation, as the cause of our present evils, and to the reform of parliament, he looks as their remedy. In the conclusion of the fifth section he thus explicitly states his sentiments :

“ An equal and uncorrupt representation would, we are persuaded, save us from heavy expences, and deliver us from many oppressions; we will therefore do our duty to procure this reform, which appears to us of the utmost importance.” How is it proposed to procure this Reform? why “ by constitutional means, by the circulation of truth in a peaceable, calm, unbiassed manner.” Can this then be maliciously intended, and does it fall within the ATTORNEY GENERAL’s description of sedition? and is it right that a subject of this country should be convicted of a crime, and subjected to heavy punishment for publishing what he was persuaded in his own mind at least was true, namely, that evils subsist in this country; and that thence there arises a necessity for reform? Mr. ATTORNEY GENERAL seems to admit that a man may publish, if he pleases, the evils which appear to him to subsist; but then, says he, when he points out the defects, he should point out also the positive advantages arising from our representation; he should state the blessings we enjoy from the mixed nature of our Monarchy; if he draws the gloomy part, he should present us also with the bright side of the picture, in order that we may see the whole together, and be able to compare what is beautiful with what is deformed in the structure of our government. I must own that I was rather surprized to hear such an argument fall from my learned friend: I can hardly

hardly think the observation fair, or by any means worthy of his enlightened understanding. He must know that when a man puts his thoughts upon paper, and wishes to urge any particular point, he confines himself to the question he has in view, he directs his whole attention to illustrate and enforce it, and does not think it necessary to go into every angle and corner, to rake together heterogeneous materials, which, though they may be connected with the general subject, are foreign to his particular purpose.

No man, if he felt himself goaded by the Excise Laws, could be expected in his petition for redress, to state all the advantages which arose to the state out of the other branches of the revenue. A man could not, if this was to be adopted as a rule, complain of a grievance, however intolerable he felt it to himself, without also stating the comforts which were enjoyed by others. Is a man not to be permitted to seek redress, however much he may want it, from any part of the government under which he lives, and to support which he contributes so much, unless in enumerating his particular grievance he enteres into a general panegyric on the constitution. Will Mr. Attorney General say to day, that this is the law of libel?

This very point has been most admirably touched upon by a person who ranks in the highest class of genius, and whose splendid and powerful talents often exerted in the cause of the people, may possibly bear away the palm in the minds of posterity from the most illustrious names of Grece and Rome.

This person, (Mr. Burke) published observations on the affairs of France, at the commencement of their revolution; any allusion to this work has certainly nothing immediately to do with the present question, but it may serve to illustrate a very important point—namely, that when a man has any particular thing in view, he loses sight for a time even of his own sentiments on former occasions—When that right honourable gentleman was asked by those who had so often and with such delight listened to his eloquence in favour of the people why he had excluded his former favourite topic from a share in his work, and made monarchy the sole subject of his vindication and panygeric?—Whatever may be the work itself, the answer which he gave upon that occasion must be admitted to be sound and forcible.—When the rights of the people appeared to be in danger from the increasing and overpowering influence of the Crown, he brought forward, he said, sentiments favourable to such rights.—When monarchy was

in danger, monarchy became the object of his protection ; the rights of the people were nothing to him then ; they did not form the subject of his book ; his object was, to shew where the danger lay. And he then introduced the beautiful illustration from Homer relative to the death of Hector. " When," said he, " the body of that young hero was placed before the aged king, his other sons surrounded him, anxious to afford that consolation which so great a calamity required. The unhappy father, as if offended with their tenderness, flung his affectionate offspring from him like a pestilence. Was it that the inanimate and useless corpse was dearer to the parent than the living children ?—No. But his mind was so absorbed, so buried in the fate of Hector, that he was for a while incapable of entertaining any other impression."—So said the author of that book ; and it was well said ; for when a man writes upon a particular subject he centres his mind in that subject ; he calls forth all the powers and energy of which he is possessed to the discussion, and allows nothing that has not an immediate relation to the object he has in view to divide his feelings or distract his attention. But if the observations of Mr. Attorney General are to be adopted as a rule, it will be impossible to discuss any point of a question without entering into the whole merits ; no man will dare to complain of any abuse of the constitution, without, at the same time, enumerating all its excellencies, or to touch upon a topic of grievance without bringing forward a recital of blessings. A paragraph would be swelled to a pamphlet, and an essay expanded to a dissertation.

But it seems that the circumstances of the times render any opinion in favour of a reform of parliament peculiarly improper, and even dangerous, and therefore the declaration in this paper, that a reform was the only remedy for our grievances, must, in the present moment, be ascribed to mischievous intentions. Were I impressed with a sense of that corruption, which has, to a certain degree, impaired and defaced the fair fabric of our constitution, and which, if not stopt in its progress, may lead to its decay and ruin ; were I, I say, to address you, gentlemen of the Jury, to petition for a reform of parliament, I would address you particularly now, as the season most fit for the purpose, I would address you now, because we have seen in other countries, the effect of suffering evils to exist too long in a government, and increase to such a pitch, that it became impossible to correct them without

out bringing on greater evils than those which it was the first object of the people to remove ; that it became impossible to remedy abuses without opening a door to anarchy and disorder. There are many diseases which might be removed by gentle means in their commencement, and even corrected by timely attention to regimen, which when neglected bring their unfortunate victims to the grave. A slight wound may be cured by the simplest application seasonably administered, which if left to itself will end in gangrene, mortification, and death. If experience can be of any service to warn men of their danger and instruct them how to avoid it, these are the times which teach men the best sort of wisdom, that wisdom which comes not too late to be useful. I have myself no hesitation in subscribing to all the great points in this declaration of the meeting at Derby. To the abuses of our representative system they ascribe our unnecessary war, our heavy burdens, our many national calamities. And at what period have not the best and wisest men, whom this country ever produced, adopted the same sentiments, and employed the same language. The illustrious Earl of Chatham has dignified the cause by the finest specimens of eloquence, to be found in the annals of any country. And who has not read the beautiful and energetic letter of Sir George Savile, to his constituents on the same subject, a letter which is so much in point that I must beg leave to repeat it to you on the present occasion.

“ I return to you baffled and dispirited, and I am sorry
“ that truth obliges me to add, with hardly a ray of hope
“ of seeing any change in the miserable course of public ca-
“ lamities.

“ On this melancholy day of account, in rendering up to
“ you my trust, I deliver to you your share of a country
“ maimed and weakened ; its treasure lavished and misspent ;
“ its honours faded ; and its conduct the laughing stock of
“ Europe : our nation in a manner without allies or friends,
“ except such as we have hired to destroy our fellow-subjects,
“ and to ravage a country, in which we once claimed an
“ invaluable share. I return to you some of your principal
“ privileges impeached and mangled. And, lastly, I leave
“ you, as I conceive, at this hour and moment fully, ef-
“ fectually, and absolutely, under the discretion and power
“ of a military force, which is to act without waiting for the
“ authority of the civil magistrates.

“ Some have been accused of exaggerating the public mis-
“ fortunes, nay, of having endeavoured to help forward the

“ mischief, that they might afterwards raise discontents. I
 “ am willing to hope, that neither my temper, nor my si-
 “ tuation in life, will be thought naturally to urge me to
 “ promote misery, discord, or confusion, or to exult in the
 “ subversion of order, or in the ruin of property. I have no
 “ reason to contemplate with pleasure the poverty of our
 “ country, the increase of our debts, and of our taxes; or
 “ the decay of our commerce.—Trust not, however, to my
 “ report : reflect, compare, and judge for yourselves.

“ But, under all these disheartening circumstances, I could
 “ yet entertain a cheerful hope, and undertake again the
 “ commission with alacrity, as well as zeal, if I could see
 “ any effectual steps taken to remove the original cause of
 “ the mischief—Then would there be a hope

“ But, till the purity of the constituent body, and thereby
 “ that of the representative, be restored, there is NONE.

“ I gladly embrace this most public opportunity of deliver-
 “ ing my sentiments, not only to all my constituents, but
 “ to those likewise not my constituents, whom yet, in the
 “ large sense, I represent, and am faithfully to serve.

“ I look upon restoring election and representation in some
 “ degree (for I expect no miracles) to their original purity,
 “ to be that, without which all other efforts will be vain and
 “ ridiculous.

“ If something be not done, you may, indeed, retain the
 “ outward form of your constitution, but not the power
 “ thereof.”

Such were the words of that great good man, words surely
 equally forcible with any of those employed in the declaration
 of the meeting at Derby, yet, who could ever impute to him
 mischievous intentions, or suspect him of seditious motives?
 Yet this letter he has published and circulated with the
 greatest care, not only among his constituents in the exten-
 sive county of York, but addressed it to the nation at
 large, and recommended it to their attention. Who does not
 recollect the conduct which had been adopted on the same
 subject by the persons now nearest His Majesty's person, and
 highest in his Counsels. Had not the same truths publish-
 ed in this declaration been repeatedly asserted and enforced by
 them? Names it is unnecessary to mention, the charac-
 ters and proceedings to which I refer are sufficiently known:
 but at the same time, I beg leave to be understood, to convey
 no personal reflection or reproach. I am the more anxious in
 this instance, to guard against misrepresentation from what
happened to me upon a late occasion, where in consequence
of

of an argument which I brought forward being misunderstood, an observation was put into my mouth, which would have disgraced the lips of an ideot. It was ascribed to me that I had said, that if any man had written a libel, and could prove the publication of the same libel by another person before, he might justify himself under that circumstance. I cannot conceive how so egregious a blunder could have been committed; what I said was, that a man may shew he was misled by another in adopting his opinion, and may use that circumstance as evidence of the innocence of his intention in the publication, or where the writing is not defamatory of an individual which may be brought to a known standard of positive law, but is only criminal from a supposed tendency, in fact to excite sedition and disorder. He may repel the existence of that tendency by shewing the Jury who alone are to judge of it, that the same writing had before been in extensive circulation, without either producing or being supposed to produce sedition, and he may also repel the inference of criminal intention, by shewing that the wisest and most virtuous men in other times had maintained the same doctrines, not merely with impunity, but with the approbation and rewards of the public. This I maintained to be the law in the case of Mr. Holt the Printer, and this I shall continue to maintain upon every suitable occasion. And to bring home the application, the first men in the present government, have held and published every doctrine contained in this paper. I must beg leave to say, that I studiously avoid all allusion which may seem to convey reproach to the high persons to whom I have referred, on account of any change apparent in their conduct and sentiments. This I do for two reasons, because, I conceive it to be unnecessary to my present argument, and, because I have a privilege to discuss their conduct in another place, where they are themselves present to answer. At any rate, a man has a right to his sentiments, and he has a right to change them; on that score I attack no man, I only defend my clients. But thus far I am entitled to say, that if they publish sentiments without having it imputed to them, that they were seditious, evil-minded and wicked, it is but fair and reasonable to alledge, that others in bringing forward the same sentiments, may be equally exempted from impure motives. I must again say, that every man has a right to publish what he thinks upon matters of public concern, to point out the impolicy of wars, or the weight of taxes, to complain of grievances, and to expose abuses. It is a right, which

which has ever been exercised, and which cannot be annihilated, without at the same time putting an end to all freedom of discussion. If we talk of the circumstances of the times, do the present afford less ground for remonstrance and complaints than former periods? I might read you many extracts from the writings of a man, whose genius I have already celebrated, (Mr. Burke) who, to eloquence, the fame of modern times, and perhaps not even surpassed by the most splendid talents of antiquity, adds the most extensive and universal acquaintance with the history both of his own country, and of every other. He (it is a merit I can never forget) with no less vehemence, and in language not less pointed and forcible than we find in this declaration, exposes the same abuses, and laments the same evils. What he wrote during the American war, are not the writers of this declaration justified in writing at present? To the defects and abuses of our system of representation, may in my opinion be ascribed all the calamities that we then suffered, that we are now suffering, or are still apparently doomed to suffer. The evils which we now lament, originated from the same source with those, which we formerly suffered. To the defects of our representation we owe the present war, as to them also, we owe that disastrous and unprincipled conflict which ended in the separation of Great Britain from her colonies. The events indeed were nearly connected, that mighty Republic beyond the Atlantic, gave birth to the New Republic in Europe, with which we were at present engaged in hostilities. From all the disagreeable consequences, which we have already experienced, which we now suffer, and which we have yet to anticipate in reserve, I will venture to say, that a reform in the representation applied, seasonably would have effectually saved the country. Is it likely, while this fruitful source of misfortune remains, that we shall not continue to suffer? and if a man really feels this opinion, is it not his duty to publish his thoughts, and to urge the adoption of the fair and proper remedy? or is he to be set down as a seditious and evil-minded man because he speaks the truth and loves his country? Of the war in which this country is engaged, I will here say nothing; it will soon come to be discussed in another place, where I have not failed to exercise that privilege which I there possess, in order to deliver my opinion of its dreadful consequences. But of all these consequences, there is none which I conceive to be more dreadful or alarming, than that in the present moment I can see no end to it, and I believe wiser persons

persons than myself, are equally at a loss to predict its determination. This paper, which so justly reprobates wars, is rumoured to come from the pen of a writer, whose productions justly entitle him to rank as the first poet of the age; who has enlarged the circle of the pleasures of taste, and embellished with new flowers the regions of fancy. It was brought forward in a meeting, in a legal and peaceable manner, and I have never heard that the author of the paper, or any of the members present at the meeting, have been prosecuted, or that the smallest censure has fallen upon their conduct. But even if *they* had been made the objects of the prosecution, sanctioned as they are in what they have written, by every principle of the Constitution, and supported in their conduct by its best and most virtuous defenders in all times, I should have had no difficulty in defending them. How much more, in the case of the defendants, who are not stated to be the authors of this paper, who only published it in the course of their business, and who published it under such peculiar circumstances, as even if the contents could have admitted any criminal interpretation, must have done away on their part all imputation of any criminal intention. They have in a manly way instructed me however to meet the question upon its own merits; not because they could not have proved a very peculiar alleviation, but because they have always presented a fair and unequivocal responsibility for the conduct of their paper. Let me particularly call your attention to this circumstance, that for the number of years during which the defendants have conducted a newspaper, they have never before, in a single instance, been tried for any offence, either against the state, or against an individual. They have in the execution of their task assiduously endeavoured to enlighten the minds of their fellow citizens, while they have avoided every thing that might tend to endanger their morals. They have displayed in the conduct of their paper a degree of learning taste and genius, superior to what has been evinced in any similar undertaking. They have done their fellow citizens a most essential service, by presenting them with the most full and correct intelligence of what has been passing on the political theatre of Europe, neither sullied by prejudice, nor disguised by misrepresentation. The attention which they have paid to the important occurrences which have taken place in a neighbouring country, and the impartiality with which they have stated them, particularly do them the greatest credit. I trust that it will be no objection to them in their character

of Editors, that they have sought only for the truth, and wherever they have found facts, have not hesitated to bring them before the public. They have thus enabled their readers to judge for themselves, and have furnished them with the means to form a proper judgement. Convinced I am that the more citizens are enlightened, the better will they be qualified to be good subjects of a good Government, and that the British constitution, as it has nothing to fear from comparison, so it can receive no support from those arts which would lead to disguise or suppress the truth with respect to other nations. Wherever they have been called to deliver their sentiments upon public occurrences, they have equally avoided being misled by the credulity of alarm, and the frenzy of innovation, and have reprobated with the same spirit and boldness the abuse of freedom and the perversion of power, the outrages of a sanguinary mob, and the oppressions of an unprincipled despot. Whatever may have been their political partialities, they are such as cannot but do them the highest honour, for their partialities have been the result of honest conviction. Though uniformly consistent in their friendships, they have never been accused by those who know them of being partizans for interest. Their opinions have been honest, as well as steady; and through life they have maintained and asserted the pure principles of rational freedom, and given the most strenuous support to the best interests of man. They have, in their daily task, ever preserved reverence for private character, and in no instance violated the decorums of life, by low ribaldry or wanton defamation; though adverse in their sentiments to Ministers, and the present measures, they confined themselves to manly discussion, and fair argument; and never descended to indecent attack, or scurrilous abuse.

" My learned friend cannot produce a single instance in the course of seventeen years, (the term of my acquaintance with them) in which they have been charged in any court with public libel, or with private defamation: and I challenge the whole world to exhibit a single instance in which they have made their journals the vehicles of slander, or where from interest, or malice, or any other base motive, they have published a single paragraph to disturb the happiness of private life, to wound the sensibility of innocence, or to outrage the decencies of well regulated society. I defy the world to produce a single instance: men who have so conducted themselves, are entitled to protection from any Government, but certainly they are particularly intitled to it,

it, where a free press is a part of the system. In the fair and liberal management of their paper, fifteen shillings out of every guinea which they receive flows directly into the public Exchequer, and besides the incessant toil, and the unwearyed watching, all the expences by which this great gain to government is produced, are borne exclusively by them. They essentially contribute therefore by their labours to the support of government, and they are as honestly and fervently attached to the true principles of the British Constitution, to the Crown, and to the mixed system of our Government, as any subject of his Majesty can be; and at the same time are as ready to acknowledge, that they ever have been advocates for a temperate and seasonable reform of the abuses which have crept into that system. Their minds are to be taken from the whole view of their conduct. It is a curious, and I will venture to say in times so convulsed an unexampled thing that in all the productions of my friends, that in all the variety of their daily miscellany, the Crown Officers have been able to pick out but one solitary advertisement out of all that they have published, on which to bring a charge of sedition; and of this advertisement, if they thought fit to go into the detail, they could shew even by internal evidence, that it got in at a very busy moment, without revision or correction, and at the same time that this advertisement appeared, 700 declarations, in support of the King's Government, appeared in the same paper, which they revised and corrected for publication.

You are not therefore to take one advertisement inserted in their paper as a criterion of their principles, but to take likewise the other advertisements which appeared along with it: Would the readers then of this paper, while they read in this advertisement a recital of the abuses of the Constitution, not be in possession of a sufficient antidote from the enumeration of its blessings; while the admirers of the Constitution came forward with an unqualified panegyric of its excellencies, were not the friends of reform justified in coming forward with a fair statement of grievances. If it is alledged, that the pecuniary interest which the Proprietors have in a newspaper, ought to subject them to a severe responsibility for its contents, let it be recollected, that they have only an interest in common with the public. I again call upon Mr. Attorney General to state, whether the fact appears to him clearly established, that the writers of this paper were influenced by seditious motives. I put it to you, Gentlemen of the Jury, as honest men, as candid judges of the conduct, as fair interpreters of the

sentiments of others, whether you do no not in your hearts and consciences believe, that these men felt as they wrote; that they complained of grievances which they actually experienced, and expressed sentiments with the truth of which they were deeply impressed. If you grant this, if you give them the credit of honest feelings, and upright intentions, on my part any farther defence is unnecessary; we are already in possession of your verdict; you have already pronounced them not guilty; for you will not condemn the conduct, when you have acquitted the heart. You will rather desire that British justice should resemble that attribute of heaven which looks not to the outward act, but the principle from which it proceeds, and the intention by which it is directed. In summing up for the Crown, I would never wish to carry the principles of liberty farther than Mr. Attorney General has done, when he asserted the right of political discussion, and desired you only to look to the temper and spirit with which such discussion was made; when he asserted, that it was right to expose abuses, to complain of grievances, provided always that it was only done with an honest mind and fair intention. Upon this principle, I appeal to you, whether this advertisement might not be written with a *bona fide* intention, and inserted among a thousand others, without any seditious purpose, or desire to disturb the public peace: The first duty of every individual is the love of his country; the principle of patriotism elevates the mind and ennobles the conduct. It is the true source of distinction, for in proportion as the individual feels it, he rises and expands to all that is great and good. But this love of our country does not consist in servile attachment, and blind adulation to authority. It was not so that our ancestors loved their country; because they loved it, they sought to discover the defects of its government; because they loved it, they endeavoured to apply the remedy. They regarded the Constitution not as slaves with a constrained and involuntary homage, but they loved it with the generous and enlightened ardour of free men. Their attachment was founded upon a conviction of its excellence, and they wished to secure its permanence by freeing it from every blemish. Such was the love which our ancestors entertained for the Constitution, and their posterity surely do not become criminal by imitating their example. I appeal to you, whether the abuses stated in this paper do not exist in the Constitution, whether their existence has not been admitted by all parties, both the friends and enemies of Reform. Both, I have no doubt, are honest in their opinions, and God forbid

bid that honest opinion in either party, should ever become a crime. In their opinion of the necessity of a reform, as the best and perhaps only remedy of the abuses of the Constitution, the writers of this paper coincide with the most eminent and enlightened men who ever adorned the country. On this ground I leave the question, secure that your verdict will be agreeable to the dictates of your own consciences, directed by a sound and unbiassed judgement, and not afraid that it will be unfavourable to my clients."

Mr. ATTORNEY GENERAL. There are some propositions which my learned friend (Mr. Erskine) has brought forward for the defendants, which not only I do not mean to dispute, as an Officer of the Crown, carrying on this prosecution, but which I will also admit to their full extent. Every individual is certainly in a considerable degree interested in this prosecution ; at the same time I must observe, that I should have, in my own opinion, betrayed my duty to the Crown, if I had not brought this subject for the consideration of a jury. Considering, however, every individual as under my protection, I think it a duty which I owe to the defendants, to acknowledge, that in no one instance before this time were they brought to the bar of any Court, to answer for any offence either against Government or a private individual.— This is the only solitary instance in which they have given occasion for such a charge to be brought against them. In every thing, therefore, that I know of the defendants, you are to take them as men standing perfectly free from any imputation but the present ; and I will also say, from all I have ever heard of the defendants, and from all I have ever observed of their morals in the conduct of their paper, I honestly and candidly believe them to be men incapable of wilfully publishing any slander on individuals, or of prostituting their paper to defamation or indecency. But my learned friend, Mr. Erskine, has stated some points, which my duty calls upon me to take notice of. I bound myself by the contents of the paper only ; I did not know the author of it. I did not know any society from which the paper purported to have originated ; it is said to be the production of a man of great abilities ; I do not know that he is the author ; at any rate, this is the first time I ever heard of that circumstance. There is one fact, on which we are all agreed, that the paper itself was dated on the 16th of July, 1792, and that it appeared in the Morning Chronicle on the 25th of December, 1792. It then

presented to the Public with a variety of other advertisements, which it will be proper for you to peruse, and for that purpose you will carry out the paper with you, if you find it necessary to withdraw, in order to see what the intent of the defendants was in publishing this paper. A bill, I also admit, passed into a law, the last session of Parliament, upon the subject of libels, but it would be exceedingly unfortunate for the subjects of this country, if my learned friend and myself were to be allowed to give evidence in a Court of Justice of what was our intention in passing that bill. The bill has now become a solemn act of the Legislature, and must speak for itself by its contents; but however it has, in my opinion, done what it was intended to do. It refers the question of guilt to the jury in cases of libels, precisely as in every other criminal case. My learned friend has insisted, that criminal intention is matter of fact mixed with matter of law. I agree to this description; but then the law says that such and such facts are evidence of such and such intention. Treason, for instance, depends upon intention; but such and such acts are evidence of a criminal intention; and if the jury entertain any doubts upon any part of the charge, his Lordship will only do his duty by giving them his advice and direction, which will be, that he who does such and such things, if he does them with a criminal intention, is amenable to the law, and that such and such acts are evidence of the criminal intention; and then the jury must decide upon that evidence, and upon that advice, whether the defendant was or was not guilty; so says Mr. Erskine, and so I say; for it is a matter of plain common sense, coming home to the understanding of every man. Mr. Erskine has contended, that the jury must not draw the inference of criminal intention from the mere fact of publishing a paper. Certainly not; but they may draw the inference of guilty intention, if they discover in the contents of the paper a wicked and malicious spirit, evidently pursuing a bad object by unwarrantable means. If I should put a paper into the hands of the jury, desiring them to put my learned friend to death, would not that prove an evil intention against my friend's life? In all cases of publication, containing any thing improper, the bad intention of the person publishing was clear, unless on his own part he could prove the contrary. Such has always been the law of England, in criminal cases of this description. Mr. Erskine has desired you to carry out the paper, and look at the other advertisements; upon this I am bound to remark, that there is not

one of them, except that in question, which is not dated in the month of December, while this advertisement is dated on the 16th of July, though it did not find its way into the Morning Chronicle until the end of the month of December. How that came to happen I cannot tell; it must be left to you to determine; but it does appear that at a very critical moment to the constitution of this country, it was brought out to counteract the intention and effect of all the other declarations in support of Government. At what time the defendants received the paper in question, they had not attempted to prove. Why, if they received it in July, they did not then insert it, they did not say. They had brought no exculpatory evidence whatever to account for the delay. It was urged that the defendants only published it in the way of business, as an advertisement, and therefore they could not be said to be guilty; if I should be brought to admit this as a sufficient answer, and never institute a prosecution where such was the case, I should, in so doing, deliver the jury, and every man in this country, to the mercy of every newspaper-printer in this kingdom, to be traduced and vilified, just as the malice of any man, who chose to pay for vending his own scandal, should dictate; I therefore entreat you to bring the case home to your own bosoms, and to act for the Public, as in such an instance you would wish to act for yourselves. I must likewise say, that if you are to look for the intention of the defendants in the other matter contained in the same paper, you will find various strong and even intemperate things. Among others, you will find the following, which, if it did not shew a seditious, did not breathe a very temperate spirit. " Well might Mr. Fox call " this the most momentous crisis that he ever heard of in the " history of England; for we will venture to say, there is " not any one species of tyranny, which might not, in the " present day, be tried with impunity; no sort of oppression " which would not find, not merely advocates, but sup- " porters, and never, never in the most agitated moments of " our history, were men so universally tame, or so despi- " cably feeble."

This paragraph was no advertisement; it came from no Society; and was, he took it for granted, not to be disavowed by the defendants.

Upon the question of a reform of Parliament, I remain of the same opinion which I have always entertained; and whatever may have been said or thought by Mr. Fox, Mr. Pitt, the Duke of Richmond, the late Earl

of Chatham, or the late Sir George Saville, or by any man, let his authority have been ever so great, never while I live will I consent to vote for a reform in Parliament, until I see something specific to be done, and can be very sure that the good to be gained will make it worth while to hazard the experiment.

In this way of thinking I am the more confirmed, from the circumstance, that of all the wise and excellent men who have at different times agitated the question of reform, none of them have ever been able to agree upon any one specific plan. And I declare, that I would rather suffer death than consent to open a door for such alterations in the Government of this country, as chance or bad men might direct, or even good men, misled by bad, might, in the first instance, be inclined to adopt. I shudder, indeed, when I reflect on what have been the consequences of innovation in a neighbouring country. The many excellent men who there began to try experiments on Government, confining their views within certain limits of moderation, and having no other object than the public good, little did they foresee in their outset the excesses and crimes which would follow in the progress of that revolution, of which they were the authors, and of which they were themselves destined to become the victims. They are now lying in the sepulchres of the dead, and the tombs of mortality, and most willingly, I am persuaded, would they have consigned themselves to their fate, if by their death, they could have saved their unhappy country from the horrors and miseries of that dreadful anarchy into which it has fallen. Never, with such examples before my eyes, will I stake the blessings which we possess under the Government of this country, upon the precarious consequences of innovation; nor consent to any alteration, of which, whatever may be stated as its object, the precise effects can never be ascertained. Indeed, I must think that my friend, Mr. Erskine, in his propositions with respect to a reform, allows himself to talk like a child, and does not sufficiently consult that excellent judgement which he displays upon every other occasion. But let me intreat him to reflect on the situation in which both of us are now placed, and which, if, twenty years ago, any person had told me I should have attained, I should have regarded it as madness. If we, by our industry, (my friend, indeed, with the advantage of his superior talents) have acquired a degree of opulence and distinction, which we could not reasonably have looked for, let us be thankful to that Government to whose protection

tion and favour we are, in a great measure, indebted for our success. And do not let us, by any rash attempt upon our Constitution, put it out of the power of our children to rise to similar situations, or deprive them of those blessings which we have ourselves so signally experienced. Do not let us pull down a fabric, which has been the admiration of ages, and which it may be impossible to erect anew. Let me again call your attention to the paper upon which this prosecution is founded. (Here Mr. Attorney General read several extracts from the declaration.) After what you have heard, I think it is impossible to doubt of the libellous tendency of this publication. It states, as I have already said, the whole of our Government as one mass of grievances and abuse; while it does not so much as enumerate a single blessing or advantage with which it is attended. It represents it as corrupt and oppressive in every branch, as polluted in its very source, its legislature, and its courts of justice. What I ask can be supposed to be the spirit by which such representations are dictated, and the consequences to which they are calculated to lead. Can you admit such representations to have been brought forward, *bina fide*, and from no other motive, than the wish to procure a peaceable and legal redress of grievances? If you can admit this, you will of course find the defendants not guilty. But if it shall appear otherwise, let me remind you of that duty which you owe to the public, with whose safety and protection you are intrusted, and whose interests you are to consult in the verdict which you shall give. Let me remind you of the necessity of checking, in proper time, the spirit of sedition, and frustrating the designs of the factious, before it be too late. Let me conclude with observing, that I have brought forward this prosecution as a servant of the public, influenced by my own judgement, and acting from what I conceived to be my duty. I had no other view than the public advantage; and should you be of opinion that the defendants ought to be declared not guilty, I trust you will acquit me of any intention of acting either impertinently with respect to you, or oppressively to the defendants. I shall then retire, conscious of having done my duty in having stated my opinion, though inclined, in deference to your verdict, to suppose myself mistaken.

Lord KENYON then gave a charge in substance as follows:

" Gentlemen of the Jury.—There are no cases which call forth greater exertions of great abilities than those that relate to political libels. And as this cause, both on the part of the prosecution, and also on behalf of the defendants, has been so ample

amply discussed that the subject is exhausted, I should have satisfied myself with what has been already said, if there was not a duty lying on me, which by the law of the land it is incumbent on me to discharge.

" The liberty of the press has always been, and has justly been, a favourite topic with Englishmen. They have looked at it with jealousy whenever it has been invaded; and though a licenser was put over the press, and was suffered to exist for some years after the coming of William, and after the revolution, yet the reluctant spirit of English liberty called for a repeal of that law; and from that time to this it has not been shackled and limited more than it ought to be.

" Gentlemen, it is placed as the sentinel to alarm us, when any attempt is made on our liberties; and we ought to be watchful, and to take care that the sentinel is not abused and converted into a traitor. It can only be protected by being kept within due limits, and by our doing those things which we ought, and watching over the liberties of the people; but the instant it degenerates into licentiousness, we ought not to suffer it to exist without punishment. It is therefore for the protection of liberty, that its licentiousness is brought to punishment.

" A great deal has been said respecting a Reform of Parliament, that is an alteration of Parliament. If I were called upon to decide on that point, before I would pull down the fabric, or presume to disturb one stone in the structure, I would consider what those benefits are which it seeks, and whether they, to the extent to which they are asked, ought to be hazarded; whether any imaginary reform ought to be adopted, however virtuous the breast, or however able the head, that might attempt such a reform. I should be a little afraid, that when the water was let out, nobody could tell how to stop it; if the lion was once let into the house, who would be found to shut the door? I should first feel the greater benefits of a reform, and should not hazard our present blessings out of a capricious humour to bring about such a measure.

" The merits or demerits of the late law respecting libels I shall not enter into. It is enough for me that it is the law of the land, which by my oath I am bound to give effect to, and it commands me to state to Juries what my opinion is respecting this or any other paper brought into judgement before them. In forming my opinion on this paper, or on any other, before I arrive at a positive decision on that point, I would look about and see what the times were when the publication took place. I would look at all the attendant cir-

cumstances,

cumstances, and with that assistance I would set about to expound the paper. The observations which this cause calls for form a part of the notorious history of the country. How long this paper was penned before it appeared in this newspaper, I know not : the 25th of December is the day, when it was published, and it is dated the 16th of July, 1792.

" Gentlemen, you will recollect the appearance of public affairs, and the feelings of every mind in the country at the time that Parliament met, and for some time after, in December last. I do not know whether I colour the picture right when I say, very gloomy sensations had pervaded the whole country. It is for you to say whether at that time there were not emissaries from a neighbouring country making their way, as well as they could, in this country. It is for you to say, looking at the great anarchy and confusion of France, whether they did not wish to agitate the minds of all orders of men in all countries, and to plant their tree of liberty in every kingdom of Europe. It is for you to say, whether their intention was not to eradicate every kind of government that was not sympathetic with their own. I am bound, Gentlemen, to declare my opinion on this paper, and to do so, I must take within my consideration all the circumstances of the times when this paper appeared ; I have no hesitation in saying then, that they were most gloomy. The country was torn to its center by emissaries from France. It was a notorious part, every man knows it, I could neither shut my eyes nor my ears without seeing and hearing them. Weighing then all the circumstances, that though dated in July, it was not published till December, when those emissaries were spreading their horrid doctrines ; and believing there was a great gloominess in the country — and I must shut my eyes and ears if I did not believe there was — believing also there were emissaries from France wishing to spread the maxims prevalent in that country in this, believing that the minds of the people of this country were much agitated with these political topics, and of which the mass of the people never can form a true judgement ; and reading this paper, which appears to me calculated to put the People in a state of discontent with every thing done in this country, I am bound on my oath to answer, that I think this paper was published with a wicked and malicious intent to vilify the Government, and to make the People discontented with the Constitution under which they live. That is the matter charged in this information. That it was done with a view to vilify the Constitution, the Laws, and the Government

vernment of this country, and to infuse into the minds of His Majesty's subjects a belief that they were oppressed, and on this ground I consider it as a gross and seditious libel. This is the question put to you to decide.

" It is admitted the defendants are the Proprietors of the paper in which this address was published.

" There is one topic more. It is said they were not the authors of the address, and that it got inadvertently into their paper. It never was doubted, and I suppose it never will be doubted, that the publishers of a newspaper are answerable for the contents of it. Those who think most favourably for the defendants, will go no farther than to say, that the parties publishing ought to give an account how they published it, and if there is any thing baneful in the contents, to shew how it came to them, and whether it was inserted inadvertently or otherwise. If any thing of that sort had been offered I certainly should have received it as evidence. But nothing of the kind has been offered, and the defendants stand as the Proprietors and Publishers of the paper, without the slightest evidence in alleviation being offered in their favour.

" It is not for human judgement to dive into the heart of man to know whether his intentions are good or evil. We must draw our conclusions with regard to his intentions from overt acts, and if an evil tendency is apparent on the face of any particular paper, it can only be traced by human judgement *prima facie* to a bad intention, unless evidence is brought to prove its innocence. This cause is destitute of any proof of that kind.

" It is said that this paper contains other advertisements and paragraphs, and therefore from the moral good tendency of the whole, for what I know to the contrary, you are to extract an opinion that the meaning was not bad. I cannot say the travelling into advertisements, which have nothing to do with this business, is exactly the errand you are to go upon. From this paper itself, and all the contents of it, you will extract the meaning of it; and if upon the whole you should think the tendency of it is good, in my opinion, the parties ought to be acquitted. But it is not sufficient that there should be in this paper detached good morals in part of it, unless they gave an explanation of the rest. The charge will be done away, if those parts which the Attorney General has stated are so explained as to leave nothing excepted.

" There may be morality and virtue in this paper; and yet, apparently, *latet anguis in herba*. There may be much that

that is good in it, and yet there may be much to censure. I have told you my opinion. Gentlemen, the Constitution has entrusted it to you, and it is your duty to have only one point in view--Without fear, favour or affection, without regard either to the prosecutor or the defendants, look at the question before you, and on that decide on the guilt or innocence of the defendants."

The Jury then withdrew ; it was two o'clock in the afternoon. The noble and learned Judge understanding that they were divided and likely to be some time in making up their minds, retired from the bench, and directed Mr. LOWTEN to take the verdict. At seven in the evening they gave notice that they had agreed on a special verdict, which Mr. LOWTEN could not receive ; they went up in coaches, each attended by an Officer, to Lord KENYON's house ; the special verdict was

Guilty of publishing, but with no malicious intent.

Lord KENYON. I cannot record this verdict ; it is no verdict at all.

The Jury then withdrew—and after sitting in discussion till within a few minutes of five in the morning, they found a general verdict of—NOT GUILTY.

ХІДАЙСТА

APPENDIX.

TH E following Extract from a little Tract, entitled, “The Englishman’s Right, or a Dialogue between a Barrister at Law and a Juryman, concerning the Anti-quity, Use, Power, and Duty of Jurors, by the Law of England,” is so much to the point, that it appeared to the Editor entitled to a place in an Appendix to this Trial. This piece was written by a character no less respectable than the eminent Sir John Hawles. It is worth while to remark the time at which it made its appearance; it was published at the latter end of King Charles the Second’s reign, when *criminal prosecutions* abounded, and many arts were practised to obtain unjust verdicts, by corrupting and browbeating juries. The Extract is the more curious, as it goes directly to expose and refute doctrines and maxims which have been since repeatedly revived, even in more modern times, and to decry abuses which Judges have attempted to introduce into the practice of the Court, as well as rectify any misconceptions of the jury, with respect to the nature of their duty, and the extent of their privileges. In fact, it breathes the same spirit, and inculcates the same principles, with that admirable bill on the subject of libel, lately passed into a law, and which may justly, in the words of an eminent legal character, be styled the most valuable on the statute book *.

The

* Yet, in this age, where it is usual with a certain class of men, for purposes which cannot be mistaken, to represent whatever bears the name of reform as a dangerous innovation, even this libel act, and its authors, greatly as they have merited the thanks of their country, have not escaped without their share of censure. Though in the first instance, it was found impossible to prevent the bill from passing into a law, no small pains have since been used to counteract and defeat its influence. Happily, however, for the rights of the subject, one of the principal authors of the bill has in the course of his professional duty been called to watch over its application. It is not for me to talk of the manner in which he has discharged his task; the public voice has already borne testimony to his admirable talents. Let me only remark, what recent experience has proved, that while

the

The *Barrister* having acquainted his Client, the *Juryman*, with the antiquity and excellent design of Juries, proceeds to instruct him, according to his request, in the nature of their office and power by law.

" *Barrister.* I shall gladly comply with so reasonable and just a request. * "A jury of twelve men are by our " laws the only proper judges of the matter in issue before " them." As for instance,

" 1. That testimony which is delivered to induce a jury to believe, or not to believe, the matter of fact in issue, is called in law EVIDENCE ; because thereby the jury may, out of many matters of fact, *evidere veritatem* ; that is, *see clearly the truth*, of which they are proper judges :

" 2. When any matter is sworn, deed read, or offered, whether it should be believed or not, or whether it be *true* or *false* in point of fact, the jurors are proper judges.

" 3. Whether such an act was done in such or such a manner, or to such or such an intent, the jurors are judges ; for the Court is not judge of these matters, which are evidence to prove or disprove the thing in issue ; and therefore the witnesses are always ordered to direct their speech to

the freedom of the press possesses so able an advocate, and so strenuous a supporter, it can be in no danger from any attacks, whether supported by the influence of numerous combinations, or the authority of individual opinion. That law which secures our most important rights, is happily no longer matter either of private interpretation, or of doubtful decision, and all art and influence will be found to be vain, opposed to the voice of an honest and intelligent jury.

Let those, then, who have presumed to carp at the Libel bill, read the extract which is here given ; and if they are capable of being ashamed, let them blush for their folly and presumption.— Let them learn, that the principles of that bill now passed into a law, and which they would represent as introducing innovations in practice, were upwards of a hundred years since, and in a reign to which, God forbid, that the present should bear any resemblance, acknowledged by the highest legal authority, to exist as principles in the British Constitution, and as such defended against what, however, we have not now to dread, the misconceptions entertained of their duty, by ignorant jurors, and the usurpation of the privileges of the jury by corrupt judges. Let them learn, that the law of libel introduces no innovation into the system of our Constitution, or the practice of our Courts, but restores both to their genuine principles and original purity.

* See *Coke*, 4th Part of *Insti.* fol. 84.

the jury, they being the proper judges of their testimony. And in all pleas of the Crown, (or matters criminal) the prisoner is said to *put himself for trial on his country*, which is explained and referred by the Clerk of the Court, to be meant of the jury, saying to them, *which country you are.*

“ *Juryman.* Well then, what is the part of the King’s *Justices*, or the *Court*? What are they to take cognizance of, or do, in the trials of mens lives, liberties, and properties?

“ *Barr.* Their office in general is to do *equal justice and right*; particularly,

“ 1. To see that the jury be regularly returned and duly sworn.

“ 2. To see that the prisoner (in cases where it is permissible) be allow’d his lawful challenges.

“ 3. To advise by *law*, whether such matter may be given in evidence or not; such a writing read or not; or such a man admitted to be a witness, &c.

“ 4. Because, by their learning and experience, they are presumed to be best qualified to ask pertinent questions, and in the most perspicuous manner soonest to sift out truth from amongst tedious impertinent circumstances and tautologies; they therefore commonly examine the witnesses in the Court, yet not excluding the jury, who of right may, and, where they see cause, ought, to ask them any necessary questions; which undoubtedly they may do with modesty and discretion, without begging any leave; for if asking leave be necessary, it implies in the Court a right when they list to deny it; and how then shall the jury know the right; and since we see that Counsel, who too often (*pudet hæc opprobria nobis*) for their fees, strive only to baffle witnesses, and stifle truth, take upon them daily to interrogate the evidence, it is absurd to think that the jurors should not have the same privilege, who are upon their oaths, and proper judges of the matter.

“ 5. As a discreet and lawful assistant to the jury, * they do often recapitulate and sum up the heads of the evidence, but the jurors are still to consider whether it be done truly, faithfully, and impartially; for one man’s memory may sooner fail than twelve’s. He may likewise state the law

* Vaughan’s Reports in Bushel’s case, fol. 144.

to them ; that is, deliver his opinion where the case is difficult, or they desire it. But since *ex facto jus oritur*, all matter of law arises out of matter of fact ; so that till the fact is settled, there is no room for law ; therefore all such discourses of a Judge to a jury are, or ought to be, hypothetical, not coercive ; conditional, and not positive, viz.

“ If you find the fact thus or thus, (still leaving the jury at liberty to find as they see cause) then you are to find for the plaintiff. But if you find the fact thus or thus, then you are to find for the defendant, or the like, guilty, or not guilty, in cases criminal.”

“ Lastly, They are to take the verdict of the jury, and thereupon to give judgement according to law ; for the office of a Judge (as Coke well observes) is *jus dicere*, not *jus dare* ; not to make any laws by strains of wit, or forced interpretations ; but plainly and impartially to declare the law already established. Nor can they refuse to accept the jury’s verdict, when agreed ; for if they should, and force the jury to return, and any of them would miscarry for want of accommodation, it would undoubtedly be murder, and in such case, the jury may without crime force their liberty, because they are illegally confined, having given in their verdict, and thereby honestly discharged their office, and are not to be starved for any man’s pleasure.

“ *Jurym.* But I have been told, that a jury is only judge of naked matter of fact, and not at all to take upon them to meddle with, or regard matter of law, but leave it wholly to the Court.

“ *Barr.* ’Tis most true, jurors are judges of matters of fact ; that is, their proper province, their chief business ; but yet not excluding the consideration of matter of law, as it arises out of, or is complicated with, and influences the fact ; for to say they are not at all to meddle with, or have respect to law, in giving their verdicts, is not only a false position, and contradicted by every day’s experience ; but also a very dangerous and pernicious one, tending to defeat the principal end of the institution of juries, and so subtly to undermine that, which was too strong to be battered down.

“ 1. It is false ; for though the direction, as to matter of law separately, may belong to the Judge, and the finding the matter of fact does peculiarly belong to the jury ; yet must your jury also apply matter of fact and law together ;

gether; and from their consideration of, and a right judgement upon both, bring forth their verdict; for we do not see in most general issues, as upon Not Guilty, pleaded in trespass, breach of the peace, or felony, though it be matter in law whether the party be a trespasser, a breaker of the peace, or a felon; yet the jury do not find the *fact* of the case by itself, leaving the law to the Court; but find the party guilty, or not guilty generally? So as though they answer not to the question singly, what is law, yet they determine the law in all matters, where issue is join'd. So likewise, is it not every day's practice, that when persons are indicted for murder, the jury does not only find them guilty, or not guilty, but many times, upon hearing and weighing of circumstances, brings them in either guilty of murder, manslaughter, *per infortunias*, or *se defendendo*, as they see cause. Now do they not herein complicately resolve both *law* and *fact*? And to what end is it, that when any person is prosecuted upon any statute, the statute itself is usually read to the jurors, but only that they may judge whether or no the matter be within that statute? But to put the business out of doubt, we have the suffrage of that oracle of law, LITTLETON, who, in his *Tenures*, Sect. 368, declares, "that if a jury will take upon them "the knowledge of the law upon the matter, they may;" which is agreed to likewise by COKE, in his *Comment* thereupon. And therefore it is false to say, that the jury hath not power, or doth not use frequently to apply the *fact* to the *law*, and thence taking their measures, judge of and determine the crime, or issue, by their verdict.

" 2. As juries have ever been vested with such power by law, so to exclude them from, or dispossess them of the same, were utterly to defeat the end of their institution; for then if a person should be indicted for doing any common innocent act, if it but cloathed and disguised in the indictment with the name of *treason*, or some other high crime, and proved by witnesses to have been done by him; the jury, though satisfied in conscience that the *fact* is not any such offence, as it is called, yet because (according to this fond opinion) they have no power to judge of law, and the *fact* is fully proved, they should at this rate be bound to find him guilty; and being so found, the Judge may pronounce sentence against him; for he finds him a *convicted traitor*, &c. by his Peers. And thus, as a certain physician boasted, that he had " killed one of his patients with the best me " thod in the world;" so here should we have an

cent man hang'd, drawn, and quarter'd, and all according to law.

"*Jurym.* God forbid that any such thing should be practised ! And indeed I do not very well understand you.

"*Barr.* I do not say it ever hath been, and I hope it never will be practised ; but this I will say, that according to this doctrine, it may be ; and consequently juries may thereby be rendered rather a snare, or engine of oppression, than any advantage, or guardian of our legal liberties against arbitrary injustice, and made meer properties, to do the drudgery, and bear the blame of unreasonable prosecutions ; and since you seem so dull as not to perceive it, let us put an imaginary case, not in the least to abet any irreverence towards his Majesty, but only to explain the thing, and shew the absurdness of this opinion. Suppose then, a man "should be indicted, "for that he, as a false traitor, not having the fear of God before his eyes, &c. "did traitorously, presumptuously, against his allegiance, "and with an intent to affront his Majesty's person and "government, pass by such a Royal statue, or effigies, "with his hat on his head, to the great contempt of his "Majesty and his authority, the evil example of others, "against the peace, and his Majesty's crown and dignity." Being hereupon arraigned, and having pleaded *not guilty*, suppose that sufficient evidence should swear the matter of fact laid in the indictment, viz. "that he did pass by the "statue, or picture, with his hat on ;" now imagine yourself one of the jury, that were sworn to try him, what would you do in the matter ?

"*Jurym.* Do ? Why I should be satisfied in my conscience that the man had not herein committed any crime, and so I would bring him in *not guilty*.

"*Barr.* You speak as an honest man would do ; but I hope you have not forgot the point we were upon. Suppose therefore, when you thought to do thus, the Court, or one of your brethren, should take you up, and tell you, that it was out of your power so to do ; "for look ye," saith he, "my masters, "we jurymen are only to find *matter of fact*, which being "fully proved, as in this case before us it is, we must find the "party guilty. Whether the thing be treason or not, does not belong to us to inquire. It is said so here, you see, in indictment ; and let the Court look to that ; they know "best ;

" best ; we are not judges of law ; shall we meddle with nice-ties and punctilio's, and go contrary to the directions of the Court ? So perhaps we shall bring ourselves into a præmature, (as they say) and perhaps never be suffered to be jury-men again. No, no, the matter of fact, you see, is proved, and that is our business. We must go according to our evidence ; we cannot do less. Truly it is something hard, and I pity the poor man ; but we cannot help it." After these notable documents, what would you do now ?

" *Jurym.* I should not tell what to say to it ; for I have heard several ancient jurymen speak to the very same effect, and thought they talked very wisely.

" *Barr.* Well then, would you consent to bring in the man guilty ?

" *Jurym.* Truly I should be somewhat unwilling to do it ; but I don't see which way it can be avoided, but that he must be found guilty of the fact.

" *Barr.* God help every honest body ~~but~~ such jurymen ! Have you no more regard to your oath, to your conscience, to justice, to the life of a man ?

" *Jurym.* Hold ! hold ! perhaps we would not bring him in guilty generally, but only guilty of the fact, finding no more but " guilty of passing by the statue with his hat on."

" *Barr.* This but poorly mends the matter, and signifies little or nothing ; for such a finding hath generally been refused by the Court, as being no verdict ; though it is said it was lately allow'd somewhere in *a case that required favour*.— But suppose it were accepted, what do you intend should become of the prisoner ? Must not he be kept in prison till all the Judges are at leisure and willing to meet and argue the business ? Ought you not, and what reason can you give why you should not, absolutely acquit and discharge him ? Nay, I do aver, you are bound by your oaths to do it, by saying with your mouths to the Court, what your consciences cannot but dictate to yourselves. Not guilty ; for pray consider, are you not sworn, " that you will well and truly try, and true deli-verance make !" There is none of this story of matter of fact distinguished from law in your oath. But you are *well*, that is, *fully and truly*, that is, *impartially* to try the prisoner ; so that if, upon your consciences, and the best of your understanding, by what is proved against him, you find he is guilty of that crime, wherewith he stands charged, that is, deserving death,

death, or such other punishment as the law inflicts upon an offence so denominated ; then you are to say, he is guilty ; but if you are not satisfied, that either the act he has committed was treason, or other crime, (though it be never so often called so) or that the act itself, if it were so criminal, was not done ; then what remains, but that you are to acquit him ? For the end of juries is to preserve men from oppression, which may happen as well by imposing or ruining them for that as a crime, which indeed is none, or at least not such, or so great as is pretended, as by charging them with the commission of that, which in truth was not committed ; and how do you " well and truly try, and true deliverance make," when indeed you do but deliver him up to others, to be condemned for that, which yourselves do not believe to be any crime ?"

as Carl
5/10/02

THE END.